

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1587

United States Court of Appeals

For the Second Circuit.

MICHAEL MEEROPOL and ROBERT MEEROPOL,
Plaintiffs-Appellants,

against

LOUIS NIZER and DOUBLEDAY & COMPANY, INC.,
Defendants-Appellees,

and

FAWCETT PUBLICATIONS, INC.,
Defendant-Intervenor-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPENDIX.

MARSHALL PERLIN AND SAMUEL GRUBER,
Attorneys for Plaintiffs-Appellants,
36 West 44th Street,
New York, N.Y. 10036
(212) 661-1886.

PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON,
Attorneys for Defendant-Appellee, Louis Nizer,
40 West 57th Street,
New York, N.Y. 10019
(212) 977-9700.

SATERLEE & STEPHENS,
*Attorneys for Defendant-Appellee, Doubleday &
Company, Inc., and Intervenor-Appellee,
Fawcett Publications, Inc.,*
277 Park Avenue,
New York, N.Y. 10017
(212) 826-6200.



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COURT OF APPEALS,
SECOND CIRCUIT.

-----X

ROBERT MEEROPOL,
Plaintiffs-Appellants,

vs.

DOUBLEDAY & COMPANY, INC.,
Defendants-Appellees,

INTERVENTIONS, INC.,

vs. - Intervenor-Appellee.

-----X

STATEMENT OF FACTS.

Proceeding

issued summons

show cause for preliminary

Judge Tyler No. 39686
motion for a temporary
relief and denying
cross motion to dismiss
of the complaint.

Louis Nizer's answer

Doubleday and Company's

RELEVANT DOCKET ENTRIES

Date FiledProceeding1974

Mar. 20	Defendant Fawcett's order to show cause and affidavit seeking stay of Connecticut proceedings Letter of R. M. Callagy dated March 20, 1974
Mar. 29	Notice of motion by Fawcett to intervene as party defendant
Apr. 1	Affidavit of George Berger regarding supplemental complaint
Apr. 3	Affidavit of R. M. Callagy in reply to affidavits of plaintiff on deferring settlement of order
Apr. 3	Affidavit of Marshall Perlin for plaintiff in opposition of order to show cause
Apr. 3	Plaintiff's notice of motion for an order vacating and setting aside the order to show cause
Apr. 3	Affidavit of Samuel Gruber for plaintiffs in opposition of order to show cause of Fawcett
Apr. 3	Plaintiff's notice of motion for an order adjourning settlement of order to show cause
Apr. 3	Defendant Doubleday and Company's order staying Connecticut action and granting Fawcett leave to intervene and denying plaintiff's cross motions

RELEVANT DOCKET ENTRIES

<u>Date Filed</u>	<u>Proceeding</u>
<u>1974</u>	
Apr. 3	Plaintiff's affidavit by Marshall Perlin in support of motion and in opposition to proposed order staying Connecticut action and Fawcett's motion to intervene and denying plaintiff's motion and cross motions
Apr. 3	Affidavit of Callagy in behalf of defendant Doubleday
Apr. 3	Opinion of Tyler, J., No. 40548 staying the Connecticut action denying the plaintiff's cross motion to vacate the order to show cause, granting Fawcett's motion to intervene and denying plaintiff's motion to postpone settlement
Apr. 8	Affidavit of Marshall Perlin in opposition to Fawcett's motion to intervene
Apr. 11	Answer of Fawcett Publications Inc.
Apr. 22	Plaintiff's Notice of Appeal
Apr. 22	Plaintiff's demand for jury trial
May 1	Motion of Doubleday, Fawcett and Nizer to strike demand for jury trial
May 17	Plaintiff's notice of motion to strike answer of Fawcett
May 31	Transcript of proceedings of April 4, 1974

NOTICE OF APPEAL.
 UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF NEW YORK
 ----- X

MICHAEL MEEROPOL and ROBERT MEEROPOL,

Plaintiffs,

-against-

73 Civ. 2720
(HRT)

LOUIS NIZER and DOUBLEDAY & COMPANY, INC., NOTICE OF APPEAL
 Defendants.

----- X

NOTICE IS HEREBY GIVEN that Michael Meeropol and Robert Meeropol, the plaintiffs above named and the plaintiffs in the action entitled Michael Meeropol, a/k/a Michael Allen Rosenberg and Robert Meeropol, a/k/a Robert Harry Rosenberg v. Fawcett Publications, Inc., bearing file No. Civ. B-74-73, filed and instituted in the United States District Court for the District of Connecticut, hereby appeal to the United States Court of Appeals for the Second Circuit from the order of the Hon. Harold R. Tyler, Jr., Judge of the District Court for the Southern District of New York, signed and filed on April 3, 1974, permanently staying and enjoining the action entitled Michael Meeropol, a/k/a Michael Allen Rosenberg and Robert Meeropol, a/k/a Robert Harry Rosenberg v. Fawcett Publications, Inc., permanently staying and enjoining the aforesaid plaintiffs and their attorneys from taking any action or proceedings in the aforesaid action pending in the District Court of Connecticut until the final judgment in the present action instituted

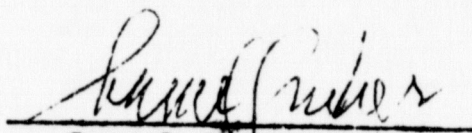
NOTICE OF APPEAL

in the United States District Court for the Southern District of New York; granting the motion of Fawcett Publications, Inc. to intervene in the within action as party defendant; denying plaintiffs' motion to vacate the order to show cause and temporary stay obtained by Fawcett Publications, Inc. dated March 19, 1974; and denying plaintiffs' motion for a stay of the order of April 3, 1974 pending the appeal therefrom.

Dated: New York, New York
April 20, 1974


Marshall Berlin

Attorney for Plaintiffs
Michael Meeropol and Robert Meeropol
36 West 44th Street
New York, New York 10036
(212) 661-1886


Samuel Gruber

Attorney for Plaintiffs in the Connecticut Action, Michael Meeropol a/k/a Michael Allen Rosenberg and Robert Meeropol a/k/a Robert Harry Rosenberg

218 Bedford Street
Stamford, Connecticut 06091
(203) 322 - 7789

NOTICE OF APPEAL

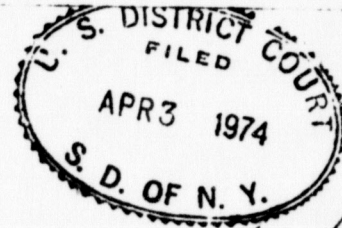
TO:

PHILLIPS, NIZER, BENJAMIN,
KLIM & BAILLOU
Attorneys for Defendant Louis Nizer
40 West 37th Street
New York, New York 10019

SATERLEE & STEPHENS
Attorneys for Defendants
Doubleday & Company, Inc. and
Fawcett Publications, Inc. *per [signature]*
277 Park Avenue
New York, New York 10017

ORDER OF JUDGE TYLER STAYING CONNECTICUT ACTION, ETC.
APPEALED FROM.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



-----x

MICHAEL MEEROPOL and ROBERT MEEROPOL, :
Plaintiffs, :

-against-

LOUIS NIZER and DOUBLEDAY & COMPANY, :
INC., :

Defendants. :

-----x

73 Civ. 2720
(HRT)

ORDER STAYING
CONNECTICUT ACTION

Defendant, Doubleday & Company, Inc. (Doubleday),
joined by Fawcett Publications, Inc. (Fawcett), a defendant in an
action entitled Michael Meeropol, a/k/a Michael Allen Rosenberg
and Robert Meeropol, a/k/a Robert Harry Rosenberg v. Fawcett
Publications, Inc., bearing File No. B-74-73 Civ. (JAN), which
was instituted by plaintiffs in the U.S. District Court for the
District of Connecticut (Connecticut action) on March 11, 1974,
having moved by order to show cause for an order staying all pro-
ceedings in the Connecticut action pending a final determination
of this action,

NOW, upon reading the order to show cause dated March
19, 1974 containing a temporary stay of the Connecticut action,
the affidavit of Robert M. Callagy, sworn to March 19, 1974 and
the letter of Robert M. Callagy to the Court dated March 20, 1974,
all with proof of proper service upon the New York and Connecticut
attorneys for the plaintiffs, submitted in support of said motion
for a permanent stay of the Connecticut action, and upon the

ORDER OF JUDGE TYLER STAYING CONNECTICUT ACTION, ETC.
APPEALED FROM

notice of motion of plaintiffs to vacate and set aside the order to show cause and temporary stay in this action dated March 21, 1974 and the affidavits of Marshall Perlin, Esq. and Samuel Gruber, Esq., both sworn to March 22, 1974, submitted in opposition to the motion for a permanent stay and in support of plaintiffs' motion to vacate the temporary stay, all with proof of service upon the attorneys for the defendants in this action and the attorneys for the defendant in the Connecticut action, and it appearing to the Court that the Connecticut action arises by reason of the publication by Fawcett of the paperback edition of THE IMPLOSION CONSPIRACY the book which is the subject of this action, and because Fawcett has been indemnified by Doubleday against claims arising out of its publication of the paperback edition of THE IMPLOSION CONSPIRACY that said Connecticut action for all purposes involves the same parties and the same subject matter as this action which was commenced more than eight months before the Connecticut action and it having been represented to this Court that Fawcett is doing business in New York and has agreed to intervene in this action and accept service of a supplemental summons and complaint which names Fawcett as a defendant by reason of its publication of the paperback edition of THE IMPLOSION CONSPIRACY and this Court having heard Robert M. Callagy on behalf of defendant Doubleday and defendant Fawcett in the Connecticut action in support of said motion and in opposition to plaintiffs' motion to vacate, and Marshall Perlin and Samuel Gruber, attorneys for the plaintiffs in the New York and Connecticut actions, respectively, in opposition to the motion for a permanent stay and in support of plaintiffs' motion to vacate the temporary stay and due deliberation having been had thereon and

ORDER OF JUDGE TYLER STAYING CONNECTICUT ACTION, ETC.
APPEALED FROM

this Court having rendered its decision in writing denying plaintiffs' motion to vacate the temporary stay and granting the motion of defendant Doubleday and defendant Fawcett in the Connecticut action to permanently stay the Connecticut action,

NOW, upon motion of Satterlee & Stephens, attorneys for defendant Doubleday and defendant Fawcett in the Connecticut action, it is

ORDERED, that the action entitled Michael Meeropol, a/k/a Michael Allen Rosenberg and Robert Meeropol, a/k/a Robert Harry Rosenberg v. Fawcett Publications, Inc., bearing File No. B-74-73 Civ. (JAN) be, and the same hereby is, permanently stayed and plaintiffs and their attorneys be, and they hereby are, stayed from taking any further action or proceedings in the Connecticut

action until entry of a final judgment in this action ^{on condition} ~~that the defendant Fawcett in the Connecticut action appear as~~ ^{and that the} ~~soon as reasonably practicable in this action; and it is further~~ ^{file a supplemental complaint against Fawcett as granted, and it is further}

ORDERED, that plaintiffs' motion to vacate the order to show cause and temporary stay be, and the same hereby is, denied; ~~and it is further~~

~~Ordered that plaintiffs' motion seeking~~ ^{U.S.D.J.} ~~adjourn settlement of this order or, in the alternative~~ ^{to stay this order pending an appeal therefrom be, and} ~~the same hereby is denied.~~

Dated: New York, N.Y.

March 29, 1974.

APRIL 1ST

Dated New York, N.Y.
April 3, 1974.

HR Tyler, J.

10a COMPLAINT (Southern District of New York).
UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

-----X
MICHAEL MEEROPOL and ROBERT MEEROPOL, :
Plaintiffs, :
-against- : Civ.
LOUIS NIZER and DOUBLEDAY & COMPANY :
INC., :
Defendants. :
-----X

Plaintiffs, MICHAEL MEEROPOL and ROBERT MEEROPOL,
by their attorney, MARSHALL PERLIN, allege:

COUNT I

1. This action arises under the United States Copyright Laws and pursuant to 17 U.S.C. Section 101. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331(a) and 1338 (a) and (b).

2. The plaintiffs, MICHAEL MEEROPOL and ROBERT MEEROPOL, are citizens of the Commonwealth of Massachusetts. The defendant LOUIS NIZER (hereinafter referred to as NIZER) is a citizen of the State of New York and has his principal place of business in the County, City and State of New York. The defendant DOUBLEDAY & COMPANY INC. (hereinafter referred to as DOUBLEDAY) is a corporation organized under the laws of the State of New York and has its principal place of business in the County, City and State of New York. The matter in controversy, exclusive of interest and costs, exceeds the sum

COMPLAINT (Southern District of New York)
of Ten Thousand (\$10,000.00) Dollars.

3. Plaintiffs, MICHAEL MEEROPOL and ROBERT MEEROPOL, were born under the names of Michael F. Rosenberg and Robert Rosenberg, respectively, and are the natural issue of Julius and Ethel Rosenberg. The plaintiffs' natural parents were convicted for violating 50 U.S.C. §34, and sentences of death were imposed on April 5, 1951 by Irving R. Kaufman, then a judge of the United States District Court for the Southern District of New York. On June 19, 1953 the sentences were carried out and the parents of the plaintiffs were executed at the New York State Penitentiary in Ossining, New York.

4. From July and August of 1950, when Julius and Ethel Rosenberg were first arrested, until their execution, they engaged in extensive correspondence with each other, with their children, the plaintiffs herein, with their attorney, Emanuel H. Bloch, and with others to the extent that they were able to do so and in light of prison restrictions imposed upon them.

5. Ethel and Julius Rosenberg delivered said correspondence to their attorney, Emanuel H. Bloch, to hold and secure the same in behalf of themselves and their children, the plaintiffs herein. The Rosenbergs thereafter authorized and directed that Mr. Bloch turn over certain of this correspondence to a corporation to be organized by him, which corporation was to be empowered and authorized to publish and copyright the aforesaid correspondence and hold the same in trust

COMPLAINT (Southern District of New York)
in behalf of the plaintiffs. By the time of their demise, the Rosenbergs had turned over all their correspondence to the corporation organized by Mr. Bloch for the purposes aforesaid. Said corporation was incorporated under the laws of the State of New York under the name Jero Publishing Company, Inc. (hereinafter referred to as Jero). The stockholders of said corporation, pursuant to the direction and wish of the Rosenbergs, were to be Emanuel H. Bloch and other persons designated by him, who were to hold said stock in trust for the benefit of the Rosenberg children, the plaintiffs herein.

6. On April 6, 1953, Emanuel H. Bloch organized Jero with its principal place of business at the offices of Emanuel H. Bloch, 401 Broadway, New York, New York. Jero, at the request of Ethel and Julius Rosenberg, and with their knowledge, consent and approval, arranged for the printing, publication, distribution and sale of a book made up of certain letters of the Rosenbergs, entitled DEATH HOUSE LETTERS OF ETHEL AND JULIUS ROSENBERG.

7. Between April 6, 1953 and June 24, 1953, and thereafter, Jero complied in all respects with the United States Copyright Law and all other laws covering copyright and secured the exclusive rights and privileges in and to the copyright of said book's contents and received from the Register of Copyrights a certificate of registration dated June 24, 1953 and bearing Registration No. 96637, Class A. Attached hereto as Exhibit A is a photostatic copy of said

notice, in strict and full compliance with the United States Copyright Law and all other laws governing copyright.

8. The contents of said book were original and were created by Ethel and Julius Rosenberg, citizens of the United States. The contents of said book were and are copyrightable subject matter under the laws of the United States.

9. Since June 10, 1953, said book had been published by Jero, in behalf of plaintiffs herein, and all copies of it made by Jero or under its authority or license had been printed, bound and published in strict conformity with the provisions of the United States Copyright Law and all other laws covering copyright.

10. An indenture and declaration of trust was made, dated August 19, 1953, under the terms of which Emanuel H. Bloch was the initial trustee and was thereafter joined by Shirley Graham Du Bois, Yuri Suhl, James Aronson and Malcolm Sharp as co-trustees under the aforesaid trust instrument. Said trust is known and identified as The Rosenberg Children's Trust Fund (hereinafter referred to as Trust Fund). The named beneficiaries of said trust fund named therein were the children of Julius and Ethel Rosenberg, MICHAEL ROSENBERG and ROBERT ROSENBERG, the plaintiffs herein. On January 30, 1954, Emanuel H. Bloch died, and he was succeeded by Gloria Agrin Josephson as one of the five trustees of the aforesaid trust. The Rosenberg Children's Trust Fund

was the sole stockholder of all of the stock authorized to be issued by Jero.

11. On January 3, 1957, a certificate of dissolution was filed by Jero. Said certificate was signed by its sole stockholder, the Trust Fund, by all of its five trustees. The certificate of dissolution was issued by the Secretary of State of the State of New York on January 25, 1957. All assets of the corporation, including the aforesaid copyright and any rights that said corporation had or may have had in the letters, correspondence and writings of Julius and Ethel Rosenberg were thereby conveyed and assigned to the Trust Fund.

12. The Rosenberg Children's Trust Fund, under its terms and by the powers vested with the trustees, was thereafter terminated, and all of the assets of the Trust Fund were given, conveyed and assigned to the plaintiffs herein. Since that time, to reflect the above, the Trust Fund and Jero have duly assigned, transferred and set over, in writing, all copyright interests, including the specific copyright referred to hereinabove and any related rights pertaining to said copyright, all right, title and interest in and to said copyright, and any other copyright interest based thereon, and all renewals and extensions thereof that may be secured now or in the future, and any and all other rights relating to the works encompassed by the said copyright, and any and all rights in and to all letters and correspondence of the Rosenbergs, and including, but not limited to, any and all

causes of action theretofore accrued in favor of Jero and the Trust Fund for infringement of and damage to the aforesaid rights and copyrights, to the plaintiffs herein, and constituting and appointing the plaintiffs herein as lawful attorneys-in-fact of the aforesaid assignors with all powers and rights held by them.

13. The plaintiffs herein, at the time of the demise of the Rosenbergs, were the sole beneficiaries of Julius and Ethel Rosenberg under the Laws of Intestacy of the State of New York and their sole surviving heirs.

14. Since June 20, 1968, the plaintiffs have been and still are the sole proprietors of all rights, title and interest in and to the copyrighted book entitled DEATH HOUSE LETTERS OF ETHEL AND JULIUS ROSENBERG. The plaintiffs have been and are the sole proprietors of all rights, title and interest in and to the contents of such book published under the title aforesaid, published under the title THE TESTAMENT OF ETHEL AND JULIUS ROSENBERG (1954) and published under other titles.

15. Defendant NIZER wrote a book entitled THE IMPLOSION CONSPIRACY and defendant DOUBLEDAY, acting in concert and conjunction with defendant NIZER, and both of them, published, printed, distributed, sold and placed upon the market in every state of the United States the aforesaid book and included therein material copied from plaintiffs'

16a COMPLAINT (Southern District of New York)
copyrighted book and contents and thus have infringed and are continuing to infringe upon the copyright of the plaintiffs.

16. A copy of plaintiffs' copyrighted book is attached hereto as Exhibit B, and a copy of defendants' infringing book is attached hereto as Exhibit C. The plaintiffs have notified in writing the defendants NIZER and DOUBLEDAY that they have been and are infringing upon the copyright of the plaintiffs, and defendants have nevertheless continued to infringe upon the copyright. Attached hereto as Exhibit D is the notice to defendant DOUBLEDAY dated May 10, 1973, and attached hereto as Exhibit E is the notice to defendant NIZER dated May 10, 1973.

17. The defendants herein, prior to the infringement, had full knowledge and notice of the existence of plaintiffs' copyright and notwithstanding that fact the defendants wilfully, knowingly and maliciously infringed upon the copyrights of the plaintiffs herein, all to the damage of the plaintiffs and to the copyright property of the plaintiffs.

18. From January 1973 and continuously since then, defendants NIZER and DOUBLEDAY have been publishing, selling and otherwise marketing the book entitled THE IMPLOSION CONSPIRACY, have been using the copyrighted material of the plaintiffs infringed upon as a means of promoting and selling the aforesaid book, and the defendants NIZER and DOUBLEDAY are engaged and have been engaged in unfair trade practices and unfair competition against plaintiffs to plaintiffs' irreparable damage.

COMPLAINT (Southern District of New York)
COUNT II

17a

19. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 18 of the complaint with the same force and effect as if fully set forth herein.

20. The matter in controversy, exclusive of interest and costs, exceeds the sum of Ten Thousand (\$10,000.00) Dollars, and this Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1332(a).

21. Defendant NIZER represents in the book entitled THE IMPLOSION CONSPIRACY that he is an experienced trial attorney and a legal scholar who has studied and knows each and every part of the legal proceedings in which the plaintiffs' parents were defendants and that he has studied all of the legal briefs, judicial proceedings and judicial opinions and is authoring the book in a detailed, factual and objective fashion as if he were writing "a critique for a law-review"; that in the course of preparing the book, he had acquired information from "every person I could find who touched their [the Rosenbergs] lives or deaths, as if I were a reporter on a Pulitzer-Prize mission". The defendant NIZER thus holds himself out as knowledgeable of events and conversations, not reflected in the legal proceedings, about the plaintiffs and their parents and the attitudes and feelings of the plaintiffs and their parents towards each other, as well as the relationship of the plaintiffs and their parents with their attorney

COMPLAINT (Southern District of New York)

other members of their immediate family and organizations and individuals who came to the aid of plaintiffs and their parents.

22. The defendant NIZER relates in THE IMPLOSION CONSPIRACY purported statements, conversations and events involving the plaintiffs, their parents and others, and the defendant NIZER purports to set forth in such alleged statements, conversations and description of events the motives of the plaintiffs' parents in regard to such alleged events, conversations and statements and as they pertained to the plaintiffs herein.

23. In order to deceive the reader and to impress the public with the authenticity and credibility of the false, fictitious and distorted writings regarding the plaintiffs and their parents, defendant NIZER used and copied substantial portions of the copyrighted material referred to hereinabove in Count I herein, and used such copied copyrighted material along with the false, fictitious and distorted statements referred to herein, all to embarrass, humiliate and ridicule both the plaintiffs and their parents.

24. By engaging in the conduct complained of herein in paragraphs 21 to 23, the defendants sought to pass off THE IMPLOSION CONSPIRACY as an accurate rendition of the legal proceedings, which it is not, all for the purpose of the defendants' promoting the sale of THE IMPLOSION CONSPIRACY and enhancing the commercial gain the defendants would derive.

25. Defendant NIZER in THE IMPLOSION CONSPIRACY, by malicious use of such false, fictitious and distorted statements regarding conversations and events, sought to establish falsely, as if it were fact, that the parents of the plaintiffs had no true love and affection for the plaintiffs; that the plaintiffs' parents were prepared to and did in fact use and manipulate the plaintiffs in concert with others who were supporting the Rosenbergs for various illegal and nefarious purposes; that the Rosenbergs were prepared to and did in fact desert and reject the plaintiffs and in furtherance thereof the Rosenbergs deliberately made themselves martyrs and wrongfully permitted themselves to be executed.

26. Defendant NIZER, in his writing of the aforesaid book, imparts to the readers thereof that the plaintiffs have rejected and disassociated themselves from their parents, the Rosenbergs, and from what they stood for and represented, and that contrary to the way of life of their parents, the plaintiffs have chosen to live as "normal decent citizens".

27. The aforesaid statements, conversations and events related by the defendant NIZER were false, fictitious, inaccurate and distorted, as the defendant NIZER well knew; and the defendant NIZER made such false, fictitious and distorted statements knowingly and maliciously to the damage of the plaintiffs, the invasion of the rights of the plaintiffs, including the right of privacy. Defendant NIZER knew

COMPLAINT (Southern District of New York)

by such actions and conduct on his part that he was projecting a false and misleading picture and characterization of the Rosenbergs and the plaintiffs.

28. By reason of the above, the defendants have held up the plaintiffs to ridicule and embarrassment and have invaded plaintiffs' privacy and caused injury to the plaintiffs. By reason of the above, the plaintiffs are entitled to compensatory damages in the sum of One Million (\$1,000,000.00) Dollars for damages suffered as a result of the wrongful and malicious conduct of the defendants and punitive damages against the defendants in the sum of One Million (\$1,000,000.00) Dollars.

COUNT III

29. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 27 of the complaint with the same force and effect as if fully set forth herein.

30. The plaintiffs, in addition to being the sole owners of the copyrighted property referred to hereinabove, are also the sole owners of all of the writings and correspondence of their parents, Ethel and Julius Rosenberg, which have not heretofore been published or disseminated. The plaintiffs intended and intend to publish and copyright said writings of their parents not heretofore published and copyrighted and intended and intend to do the same in connection with the aforesaid copyrighted material.

31. As a result of the conduct of the defendants

complained of hereinabove, the plaintiffs' property, consisting of the writings of their parents, Julius and Ethel Rosenberg, not heretofore published or copyrighted, have been damaged and impaired and by reason thereof plaintiffs have suffered damages in the amount of One Million (\$1,000,000.00) Dollars.

WHEREFORE, plaintiffs pray that this Court enter orders and judgments granting the following relief:

COUNT I

(1) That defendants, their agents, attorneys and employees, and those acting in their behalf and in concert with them, be enjoined, during the pendency of this action and permanently, from infringing said copyrights of plaintiffs in any manner and from publishing, selling, marketing or otherwise disposing of any copies of the book entitled THE IMPLOSION CONSPIRACY;

(2) That the defendants be required to deliver up to be impounded during the pendency of this action all copies of said book entitled THE IMPLOSION CONSPIRACY in their possession or under their control, and to deliver up for destruction all infringing copies and all plates, moulds and other matter for making such infringing copies, until all parts of the book containing the copyrighted material and the letters of Ethel and Julius Rosenberg or any portions thereof and reference thereto are removed, and that such pages and portions thereof removed from the book, be destroyed;

(3) That defendants be required to deliver up to be impounded during the pendency of this action all promotional and advertising material used by the defendants or by others in their behalf in promoting the sale of the book THE IMPLOSION CONSPIRACY which contain any references, directly or indirectly, to the letters of Ethel and Julius Rosenberg, and the aforesaid copyrighted material of the plaintiffs;

(4) That defendants be directed to delete and remove from all copies of the book in the process of being printed, reproduced or published and all copies heretofore printed, reproduced and published all of the copyrighted writings of the plaintiffs and any references thereto, and that defendants deliver up to be impounded during the pendency of this action such deleted and removed pages and portions thereof;

(5) That the defendants be required to pay to plaintiffs such damages as plaintiffs have sustained in consequence of defendants' infringements of said copyrights and said unfair trade practices and unfair competition, and to account for (a) all gains, profits and advantages derived by defendants by said trade practices and unfair competition, and (b) all gains, profits and advantages derived by defendants by their infringements of plaintiffs' copyright, and such damages as to the Court shall appear proper within the provisions of the copyright statutes;

(6) That defendants pay to plaintiffs the cost of this action and reasonable attorneys fees to be allowed to the plaintiffs by this Court;

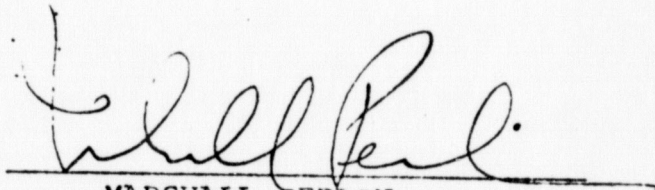
COUNT II

(1) That judgment be entered in favor of the plaintiffs and against the defendants in the sum of One Million (\$1,000,000.00) Dollars for compensatory damages and One Million (\$1,000,000.00) Dollars for punitive damages;

COUNT III

(1) That judgment be entered in favor of the plaintiffs and against the defendants in the sum of One Million (\$1,000,000.00) Dollars;

That plaintiffs have such other and further relief as is just in the premises:

A handwritten signature in dark ink, appearing to read "Marshall Perlman", is written over a horizontal line.

MARSHALL PERLIN
Attorney for Plaintiffs
Office & P. O. Address
36 West 44th Street
New York, New York 10036
Tel. (212) 661-1886

EXHIBIT D, ATTACHED TO COMPLAINT.

MARSHALL PERLIN

ATTORNEY AT LAW

36 WEST 44TH STREET

NEW YORK, N. Y. 10036

MILTON H. FRIEDMAN

(212) 661-1556

May 10, 1973

Louis Nizer, Esq.
477 Madison Avenue
New York, N. Y.

Re: THE IMPLOSION CONSPIRACY
Published by Doubleday and
Company, Inc.

Dear Mr. Nizer:

I am the attorney for the children of Julius and Ethel Rosenberg, Michael and Robert. I write this letter in their behalf regarding the above mentioned book printed, published, promoted and distributed by Doubleday & Company, Inc. in association with you as its author.

My clients are the owners, common law and statutory, of all the letters and their contents written by their parents, Ethel and Julius Rosenberg while they were incarcerated from July 1950 to the time of their execution on June 19, 1953. These letters were and are fully protected by duly filed and recorded copyright of which you and Doubleday had and have full notice and knowledge. Ownership and all rights flowing from said copyright are vested with my clients as are all other interests legal and equitable in and to these properties.

The letters of Julius and Ethel Rosenberg from which you took and used excerpts and portions are the property of my clients. These works have been copyrighted since 1953 and their use and disposition in any form is subject to use only with the written consent and approval of my clients.

As both you and Doubleday know, the letters of the Rosenbergs

EXHIBIT D, ATTACHED TO COMPLAINT

Louis Nizer, Esq.
Page Two
May 10, 1973

were published under copyright in 1953 in a book entitled Death House Letters of Julius and Ethel Rosenberg and in subsequent editions under the title The Testament of Julius and Ethel Rosenberg. Duly authorized editions have been published pursuant to license in other countries throughout the world.

Neither my clients nor their agents, representatives or employees have authorized or permitted you or Doubleday to use these letters or any part thereof at any time. The unauthorized use of these documents by you and Doubleday constitutes an unlawful infringement upon the rights and property of my clients which has resulted in grievous harm to them as well as the good name of their parents of whom they are proud.

On the acknowledgement page of THE IMPLOSION CONSPIRACY an unwarranted attempt is made to give the color of authenticity for using the Rosenberg letters by making reference to the edition of these letters published in England pursuant to license of the copyright owners. Both Doubleday and you Mr. Nizer know that such an "acknowledgement" is no substitute for authorization or permission from the copyright owners.

I note that even on the book jacket specific reference is made by you and Doubleday to the letters of Ethel and Julius Rosenberg, and you exploit these letters for your selfish monetary interests and that of Doubleday. It has been brought to my attention that a very substantial sum of money has been expended in promoting this book both prior to and since publication by Doubleday, using all media including newspapers, magazines, radio and television, and that this promotional material in turn uses and makes reference to the letters of Ethel and Julius Rosenberg.

EXHIBIT D, ATTACHED TO COMPLAINT

Louis Nizer, Esq.

Page Three

May 10, 1973

It has been brought to my attention that you in the course of appearances on television and radio have made statements which have falsely imported and given the impression that you have physical possession of the Rosenberg letters and have been authorized to use them. As you well know, you had and have neither possession of the letters nor authority to use them. I am further advised that you have been reading portions of these letters over the radio and television and other audiences. Of course, you have no right to do so. I demand in behalf of my clients that you acknowledge that fact and cease and desist from such action.

I enclose herewith a copy of a letter I have this date sent to your publishers, Doubleday & Company, Inc. I particularly direct your attention to the demands set forth therein, including, but not limited to those items lettered (a) through (h).

We demand that you as author of the book take any and all necessary steps forthwith to see that the demands set forth are complied with on the part of Doubleday as well as yourself.

We further demand that you, as well as Doubleday account to us forthwith for any monies, contractual rights or interests you have received or will receive in connection with the writing, publishing and sale of the book and also set forth any agreements and contracts entered into by you with any party or business entity of any sort with respect to the book in this or any other country regarding the use or reproduction of the book or the use of the material therein in any other fashion, including film, stage and television use of the material contained therein.

The conduct on your part as that of Doubleday has been grievously wrong and unconscionable. Not only did you unlawfully use my

EXHIBIT D, ATTACHED TO COMPLAINT

Louis Nizer, Esq.

Page Four

May 10, 1973

clients' property and outrageously infringe upon their rights but, further you improperly used these letters both in the book and in various media to promote the sale of the book in an attempt to falsely establish the book's credibility and authenticity.

I will not set forth in detail the numerous false and inaccurate statements contained in the book, the studious omission of pertinent facts of record, and the false projection of what really happened in the Rosenberg-Sobell case, yet I must in behalf of my clients particularly take note of the fact that you as the author falsely purport to speak knowingly of my clients' parents, their feelings and emotions. You set forth fictional conversation and events involving my clients and their parents which give false and misleading impressions to the reader. It is in this context that you and Doubleday have misused the letters of the Rosenbergs, all to shore up and promote the sale of this shabby piece of work which you as the author and Doubleday improperly hold out to be a scholarly legal analysis of the case.

The Rosenberg letters, published after their demise allowed the world to know something about these fine persons as reflected in their correspondence. The letters also served to raise money on behalf of the Rosenbergs' children so that they would have funds during their minority and for their education.

I, as an attorney have represented Morton Sobell, a co-defendant of the Rosenbergs, since 1955 and hence I was required to examine and am personally acquainted in detail with all the files and records of the case from its very inception. I was thus shocked to read and find that your book contained innumerable inaccuracies in your account and serious omissions of legal proceedings which challenge the basic thesis of your book, that the Rosenbergs received a fair trial from the courts

EXHIBIT D, ATTACHED TO COMPLAINT

Louis Nizer, Esq.
Page Five
May 10, 1973

and prosecution and that the facts warranted the convictions. These errors along with the distortions and fictitious narrations result in a most misleading and deceptive account of a case which culminated in an inexcusable departure from our concept of fair administration of the criminal law, an episode of which the bar will be ashamed for generations to come.

These letters were never intended to be used for the venal purpose of amassing wealth for you and Doubleday or to help disseminate a false picture of what happened in the Rosenberg case.

We therefore demand upon receipt of this letter that both you and Doubleday communicate with me immediately so that the necessary steps can be taken in accordance with the demands set forth in this communication and to work out such other steps as may be necessary to undo, at least in part, some of the great harm already done. This is to further advise you in behalf of my clients that they reserve to themselves all other rights and remedies that they may have including resort to the courts for any necessary equitable and legal relief.

Please be further advised that my clients reserve to themselves all rights and remedies that they may have by reason of the invasion of their privacy, the publishing of false and misleading and inaccurate statements attributed to them and their parents and the purported description of events involving my clients and their parents which in fact never occurred.

I am delivering simultaneously herewith a copy of this letter to Doubleday & Company, Inc.

Very truly yours


Marshall Perlin

MP/br

EXHIBIT E, ATTACHED TO COMPLAINT.

MARSHALL PERLIN

ATTORNEY AT LAW

36 WEST 44TH STREET

NEW YORK, N. Y. 10036

MILTON H. FRIEDMAN

May 10, 1973

(212) 661-1666

Doubleday & Company, Inc.
277 Park Avenue
New York, N. Y.

Re: THE IMPLOSION CONSPIRACY
by Louis Nizer

Gentlemen:

I am the attorney for the children of Julius and Ethel Rosenberg, Michael and Robert. I write this letter in their behalf regarding the above mentioned book printed, published, promoted and distributed by you in association with its author Louis Nizer.

My clients are the owners, common law and statutory, of all the letters and their contents written by their parents, Ethel and Julius Rosenberg while they were incarcerated from July 1950 to the time of their execution on June 19, 1953. These letters were and are fully protected by duly filed and recorded copyright of which both you and Mr. Nizer had and have full notice and knowledge. Ownership and all rights flowing from said copyright are vested with my clients as are all other interests legal and equitable in and to these properties.

The letters of Julius and Ethel Rosenberg from which you print excerpts and portions are the property of my clients. These works have been copyrighted since 1953 and their use and disposition in any form is subject to use only with the written consent and approval of my clients.

As both you and Mr. Nizer know, the letters of the Rosenbergs were published under copyright in 1953 in a book entitled Death House Letters of Julius and Ethel Rosenberg and in subsequent editions under the title The Testament of Julius and Ethel

EXHIBIT E, ATTACHED TO COMPLAINT

Doubleday & Company, Inc.
Page Two
March 10, 1973

Rosenberg. Duly authorized editions have been published, pursuant to license in other countries throughout the world.

Neither my clients nor their agents, representatives or employees have authorized or permitted you or Mr. Nizer to use these letters or any part thereof at any time. The unauthorized use of these documents by you and Mr. Nizer constitutes an unlawful infringement upon the rights and property of my clients which has resulted in grievous harm to them as well as the good name of their parents of whom they are proud.

On the acknowledgement page of THE IMPLOSION CONSPIRACY an unwarranted attempt is made to give the color of authenticity for using the Rosenberg letters by making reference to the edition of these letters published in England pursuant to license of the copyright owners. Both Mr. Nizer, an attorney of claimed expertise in these matters, as well as yourselves know that such an "acknowledgement" is no substitute for authorization or permission from the copyright owners.

I note that even on the book jacket specific reference is made by you and Mr. Nizer to the letters of Ethel and Julius Rosenberg, and you exploit these letters for the selfish monetary interests of Mr. Nizer and your firm. It has been brought to my attention that a very substantial sum of money has been expended in promoting this book both prior to and since publication, using all media including newspapers, magazines, radio and television, and that this promotional material in turn uses and makes reference to the letters of Ethel and Julius Rosenberg.

We demand that you immediately cease the printing, publishing, and distribution of the above named book.

EXHIBIT E, ATTACHED TO COMPLAINT

Doubleday & Company, Inc.
Page Three
May 10, 1973

We further demand that you do the following:

- a) Cease and desist in the printing, publishing, and distributing of any and all copies of the book here in the United States or any place in the world until all parts of the book containing the letters of Ethel and Julius Rosenberg or any portions thereof are removed, and that such pages and portions thereof removed from the book be turned over to me in behalf of my clients or otherwise disposed of pursuant to our direction.
- b) All copies of the book in the possession of your agents, distributors or any other entities or firms with whom you have been or are doing business shall be directed by you to return all copies of the book so that the same can be disposed of as provided for in paragraph(a) above.
- c) Deliver to us forthwith the plates, matrixes or other devices used to print the material referred to herein, whether contained in the book, book jacket, ads or contained or referred to in any other material used in connection with the book or its promotion.
- d) Cease to use any promotional and advertising material through any media that makes reference directly or indirectly to the letters of Ethel and Julius Rosenberg and, further that you recall all such material which may have been heretofore disseminated and hold the same for disposal pursuant to our instructions and directions.
- e) Permit no further printing, publishing or reproduction of the book until the material we have referred to hereinabove is totally deleted; prior to any further printing or publishing you make available to us for examination a corrected deleted copy of the book so that we may insure no further infringements on the property rights of my clients will take place or continue in the future.

EXHIBIT E, ATTACHED TO COMPLAINT

Doubleday & Company, Inc.

Page Four

May 10, 1973

f) Fully account to us forthwith for all copies of the book printed or reproduced to date as well as for all copies of the book distributed, sold or delivered and deliver a full accounting of all proceeds obtained in connection with this book. This shall also include all agreements and contracts entered into with any parties in this or any other country regarding the use or reproduction of the book or its use in any other fashion including film, stage and television. This would also include all residuary and secondary rights and uses of the book, including paperback publishing and printing, sale, and distribution.

g) Both you and Mr. Nizer acknowledge that you have no right, title, or interest in the aforesaid literary material owned by my clients and that you have no right whatsoever to use the same without the express permission of my clients, which has not been given.

h) We demand a written apology from both you and Mr. Nizer for the improper use of these letters and your having held yourselves out as authorized to use them. We also demand that you and Mr. Nizer acknowledge that what you have done in incorporating such letters in the book and promotional material was done without the authority, knowledge, consent or approval of my clients, Michael and Robert, the owners thereof. You shall distribute such public apology and acknowledgement in all the media used by you heretofore in the promotion of the book. The contents of such apology and acknowledgement shall first be submitted to us for review and approval for form and contents.

The conduct on your part as well as that of Mr. Nizer has been grievously wrong and unconscionable. Not only did you unlawfully use my clients' property and outrageously infringe upon their rights but, further you improperly used these letters both in the book and in various media to promote the sale of the book in an attempt to falsely establish the book's credibility and authenticity.

EXHIBIT E, ATTACHED TO COMPLAINT

Doubleday & Company, Inc.

Page Five

May 10, 1973

I will not set forth in detail the numerous false and inaccurate statements contained in the book, the studious omission of pertinent facts of record, and the false projection of what really occurred in the Rosenberg-Sobell case, yet I must in behalf of my clients particularly take note of the fact that the author falsely purports to speak knowingly of my clients' parents, their feelings and emotions. He sets forth fictional conversation and events involving my clients and their parents which give false and misleading impressions to the reader. It is in this context that you and Mr. Nizer have misused the letters of the Rosenbergs, all to shore up and promote the sale of this shabby piece of work which you and the author improperly hold out to be a scholarly legal analysis of the case.

The Rosenberg letters, published after their demise allowed the world to know something about these fine persons as reflected in their correspondence. The letters also served to raise money on behalf of the Rosenbergs' children so that they would have funds during their minority and for their education.

These letters were never intended to be used for the venal purpose of amassing wealth for Mr. Nizer and Doubleday or to help disseminate a false picture of what happened in the Rosenberg case and hold it out as an accurate account.

We therefore demand upon receipt of this letter that both you and Mr. Nizer communicate with me immediately so that the necessary steps can be taken in accordance with the demands set forth in this communication and to work out such other steps as may be necessary to undo, at least in part, some of the great harm already done. This is to further advise you in behalf of my clients that they reserve to themselves all other rights and remedies that they may have including resort to the courts for any necessary equitable and legal relief.

Please be further advised that my clients reserve to themselves

EXHIBIT E, ATTACHED TO COMPLAINT

Doubleday & Company, Inc.

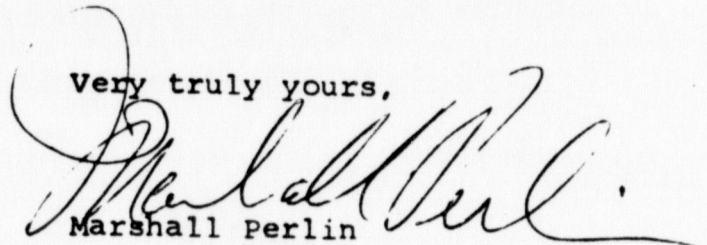
Page Six

May 10, 1973

all rights and remedies that they may have by reason of the invasion of their privacy, the publishing of false misleading and inaccurate statements attributed to them and their parents and the purported description of events involving my clients and their parents which in fact never occurred.

I am delivering simultaneously herewith a copy of the letter to Mr. Nizer.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Marshall Perlin", written over the typed name.

Marshall Perlin

MP/br

ANSWER OF DEFENDANT LOUIS NIZER.

35a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

MICHAEL MEEROPOL and ROBERT MEEROPOL, : 73 Civ. 2720
HRT

Plaintiffs, :

- against -

: ANSWER

LOUIS NIZER and DOUBLEDAY & COMPANY, :
INC.,

:
Defendants.

- - - - - x

Defendant Louis Nizer by his attorneys, Phillips,
Nizer, Benjamin, Krim & Ballon, answering the complaint
herein, states:

1. Denies each and every allegation contained in
paragraph 2, except denies knowledge or information
sufficient to form a belief as to the truth of the allega-
tions that the plaintiffs are citizens of the Commonwealth
of Massachusetts and that Doubleday & Company, Inc. is a
corporation organized under the laws of the State of New
York, and except admits that Louis Nizer is a resident of
the State of New York and has his principal place of
business in the County, City and State of New York.

2. Denies knowledge or information sufficient to
form a belief as to each and every allegation contained in
paragraph 3, except admits that Julius and Ethel Rosenberg
were convicted of violating 50 U.S.C. § 34 and that sentences
of death imposed upon them on or about April 5, 1951 by

ANSWER OF DEFENDANT LOUIS NIZER

Irving R. Kaufman, then a Judge of the United States District Court for the Southern District of New York, were carried out at the New York State Penitentiary in Ossining, New York on June 19, 1953.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 4, except admits, upon information and belief, that during the period therein indicated, Julius and Ethel Rosenberg engaged in correspondence.

4. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained within paragraphs 5 and 6, except admits that on or about April 6, 1953, Jero Publishing Company, Inc. was incorporated under the laws of the State of New York, with its principal place of business designated as 401 Broadway, New York, N. Y.

5. Denies each and every allegation contained in paragraph 7, except admits that Exhibit A annexed to the complaint is a true copy of Registration No. 96637, Class A, issued by the Register of Copyrights, and that a publication entitled Death House Letters of Ethel and Julius Rosenberg was published bearing a purported notice of copyright.

6. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in paragraphs 8 and 9, except denies that all copies of said

book made by Jero or under its authority or license, have been printed, bound and published in strict conformity with the provisions of the United States Copyright Law and all other laws governing copyright and further denies that the contents of said book were and are copyrightable subject matter under the laws of the United States.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 10 except admits that on or about January 30, 1954, Emanuel H. Bloch died.

8. Denies each and every allegation of paragraph 11, except admits that on or about January 3, 1957, a Certificate of Dissolution, signed by five persons allegedly on behalf of the Rosenberg Children's Trust Fund, was filed by Jero Publishing Company, Inc. with the Secretary of State of the State of New York.

9. Denies knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs 12, 13 and 14.

10. Denies each and every allegation contained in paragraph 15, except admits that the defendant Louis Nizer wrote a book entitled The Implosion Conspiracy, which book was printed, published, distributed, sold and placed upon the market in various states of the United States by the defendant Doubleday & Company, Inc. and admits that included

ANSWER OF DEFENDANT LOUIS NIZER

therein were excerpts from letters which also appear in the Death House Letters.

11. Denies each and every allegation contained within paragraph 16, except admits that a copy of the Death House Letters is attached to the Complaint as Exhibit B and a copy of The Implosion Conspiracy is attached to the Complaint as Exhibit C and that Exhibits D and E are true copies of letters to the defendants written on or about the dates indicated.

12. Denies each and every allegation contained within paragraph 17.

13. Denies each and every allegation contained within paragraph 18, except admits that from February, 1973 and continuously since then the defendant Doubleday has been publishing, selling, and otherwise marketing the book entitled The Implosion Conspiracy.

14. With respect to paragraph 19, repeats and realleges the denials, the denials of knowledge or information sufficient to form a belief and admissions set forth in paragraphs 1 through 13 hereof.

15. Admits that the plaintiffs purport to bring their action pursuant to the provisions of the statute cited in paragraph 20.

16. Denies each and every allegation contained in paragraphs 21, 22, 23, 24, 25, 26, 27, and 28, and

ANSWER OF DEFENDANT LOUIS NIZER

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respectfully refers the Court to The Implosion Conspiracy for the contents thereof.

17. With respect to paragraph 29, repeats and realleges the denials, the denials of knowledge or information sufficient to form a belief and admissions set forth in paragraphs 1 through 16 hereof.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30.

19. Denies each and every allegation contained in paragraph 31.

AS AND FOR A FIRST AFFIRMATIVE
DEFENSE TO COUNT ONE

20. Any utilization by the defendants of material from the Death House Letters as to which a valid copyright may exist was a fair use thereof.

AS AND FOR A SECOND AFFIRMATIVE
DEFENSE TO COUNT ONE

21. The plaintiffs lack the requisite standing to institute this action.

AS AND FOR A THIRD AFFIRMATIVE
DEFENSE TO COUNT ONE

22. Consent to the use by the defendants of any material which allegedly was the subject of copyright was given by or on behalf of the copyright owner.

ANSWER OF DEFENDANT LOUIS NIZER
AS AND FOR A FOURTH AFFIRMATIVE
DEFENSE TO COUNT ONE

23. The material complained of as infringed by the defendants or a substantial portion thereof, is in the public domain.

AS AND FOR A FIFTH AFFIRMATIVE
DEFENSE TO COUNT ONE

24. Any alleged copyright obtained by the plaintiffs' predecessors was abandoned, lost or dedicated by virtue of the offering for sale in the United States of an English language edition containing the alleged copyrighted material in violation of the Copyright Law of the United States.

AS AND FOR A SIXTH AFFIRMATIVE
DEFENSE TO COUNT ONE

25. The plaintiffs are guilty of laches and come into Court with unclean hands.

AS AND FOR A SEVENTH AFFIRMATIVE
DEFENSE TO COUNTS ONE, TWO AND THREE

26. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR AN EIGHTH AFFIRMATIVE
DEFENSE TO COUNT TWO

27. The Implosion Conspiracy deals with a subject of historical significance of which the plaintiffs were a part. Any statements contained therein of or concerning the

plaintiffs are privileged by virtue of the First and Fourteenth Amendments to the U. S. Constitution.

AS AND FOR A NINTH AFFIRMATIVE
DEFENSE TO COUNT TWO

28. Any statements in The Implosion Conspiracy of or concerning the plaintiffs consist of facts truly stated or comment fairly based thereon.

AS AND FOR A TENTH AFFIRMATIVE
DEFENSE TO COUNT TWO

29. Defendant, in making any statement of or concerning the plaintiffs in The Implosion Conspiracy reasonably relied upon reliable sources as the bases of his statements.

PHILLIPS, NIZER, BENJAMIN,
KRIM & BALLON

By George Berger
A Member of the Firm

ANSWER OF DEFENDANT DOUBLEDAY & COMPANY, INC.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
MICHAEL MEEROPOL and ROBERT MEEROPOL, :
Plaintiffs, : 73 Civ. 2720
-against- : HRT
LOUIS NIZER and DOUBLEDAY & COMPANY, : ANSWER
INC., :
Defendants. :
-----x

Defendant, Doubleday & Company, Inc. ("Doubleday"), by its attorneys, Satterlee & Stephens, for its answer to the complaint alleges as follows:

FIRST: Upon information and belief, denies each and every allegation contained in paragraph 1.

SECOND: Upon information and belief, denies each and every allegation contained in paragraph 2, except that it alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations that (1) the plaintiffs are citizens of the Commonwealth of Massachusetts, and (2) that defendant, Louis Nizer ("Nizer"), is a citizen of the State of New York and has his principal place of business in the County, City and State of New York, and except that it admits that Doubleday is a corporation organized under the laws of the State of New York and has its principal place of business in Garden City, County of Nassau, State of New York.

ANSWER OF DEFENDANT DOUBLEDAY & COMPANY, INC.

THIRD: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 3, except that it admits that Julius and Ethel Rosenberg were convicted of violating 50 U.S.C. §34 and that sentences of death imposed upon them on or about April 5, 1951 by Irving R. Kaufman, then a Judge of the United States District Court for the Southern District of New York, were carried out at the New York State Penitentiary in Ossining, New York, on June 19, 1953.

FOURTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 4, 5, and 6.

FIFTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 7, except that it admits that Exhibit A annexed to the complaint purports to be a true copy of Registration No. 56637, Class A, issued by the Register of Copyrights, and that a copy of a book entitled DEATH HOUSE LETTERS OF ETHEL AND JULIUS ROSENBERG was published bearing a purported notice of copyright.

SIXTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs 8 and 9, except that it denies that the contents of said book were and are copyrightable subject matter under the laws of the United States.

SEVENTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the

ANSWER OF DEFENDANT DOUBLEDAY & COMPANY, INC.

allegations contained in paragraphs 10 and 11, except that it admits that on or about January 3, 1957, what purports to be a Certificate of Dissolution, signed by five persons allegedly on behalf of the Rosenberg Children's Trust Fund, was filed by Jero Publishing Company, Inc. with the Secretary of State of the State of New York.

EIGHTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraphs 12, 13, and 14.

NINTH: Upon information and belief, denies each and every allegation contained in paragraph 15, except that it admits that defendant Nizer wrote a book entitled THE IMPLOSION CONSPIRACY, which book was printed, published, distributed, sold, and placed upon the market in various states of the United States by the defendant Doubleday and admits that included therein were excerpts from letters which also appear in the DEATH HOUSE LETTERS.

TENTH: Upon information and belief, denies each and every allegation contained in paragraph 16, except that it admits that Exhibits D and E are true copies of letters addressed to defendants Nizer and Doubleday respectively.

ELEVENTH: Upon information and belief, denies each and every allegation contained in paragraph 17.

TWELFTH: Denies each and every allegation contained in paragraph 18, except that it admits that from February, 1973 and continuously since then defendant Doubleday has been publishing, selling, and otherwise marketing the book entitled THE IMPLOSION CONSPIRACY.

ANSWER OF DEFENDANT DOUBLEDAY & COMPANY, INC.

THIRTEENTH: With respect to paragraph 19, repeats and realleges each and every denial or admission heretofore pleaded in answer to paragraphs 1 through 18, inclusive, with the same force and effect as if fully set forth herein.

FOURTEENTH: Upon information and belief, denies each and every allegation contained in paragraphs 20, 21, 22, 23, 24, 25, 26, 27 and 28, and respectfully refers the Court to THE IMPLOSION CONSPIRACY for the contents thereof.

FIFTEENTH: With respect to paragraph 29, repeats and realleges each and every denial or admission heretofore pleaded in answer to paragraphs 1 through 27, inclusive, with the same force and effect as if fully set forth herein.

SIXTEENTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30.

SEVENTEENTH: Upon information and belief, denies each and every allegation contained in paragraph 31.

ALL AFFIRMATION DEFENSES ARE STATED
UPON INFORMATION AND BELIEF

AS AND FOR A FIRST AFFIRMATIVE
DEFENSE TO COUNTS ONE, TWO
AND THREE

EIGHTEENTH: The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE
DEFENSE TO COUNT ONE

NINETEENTH: Any utilization by the defendants of material from the DEATH HOUSE LETTERS as to which a valid copy-right may exist was a fair use thereof.

ANSWER OF DEFENDANT DOUBLEDAY & COMPANY, INC.

AS AND FOR A THIRD AFFIRMATIVE
DEFENSE TO COUNT ONE

TWENTIETH: The plaintiffs lack the requisite standing to institute this action.

AS AND FOR A FOURTH AFFIRMATIVE
DEFENSE TO COUNT ONE

TWENTY-FIRST: Consent to the use by the defendants of any material which allegedly was the subject of copyright was given by or on behalf of the copyright owner.

AS AND FOR A FIFTH AFFIRMATIVE
DEFENSE TO COUNT ONE

TWENTY-SECOND: The material complained of as infringed by the defendants or a substantial portion thereof, is in the public domain.

AS AND FOR A SIXTH AFFIRMATIVE
DEFENSE TO COUNT ONE

TWENTY-THIRD: Any alleged copyright obtained by the plaintiffs' predecessors was abandoned, lost or dedicated by virtue of the offering for sale in the United States of an English language edition containing the alleged copyrighted material in violation of the Copyright Law of the United States.

AS AND FOR A SEVENTH AFFIRMATIVE
DEFENSE TO COUNT ONE

TWENTY-FOURTH: The plaintiffs are guilty of laches and come into Court with unclean hands.

ANSWER OF DEFENDANT DOUBLEDAY & COMPANY, INC.

AS AND FOR AN EIGHTH AFFIRMATIVE
DEFENSE TO COUNT TWO

TWENTY-FIFTH: THE IMPLOSION CONSPIRACY was written by defendant, Louis Nizer, a famous trial lawyer of national reputation, and an author of a number of literary works which, generally speaking, have been received with considerable acclaim both by literary critics and the reading public. Mr. Nizer's MY LIFE IN COURT, THE JURY RETURNS, AN ANALYSIS AND COMMENTARY ON THE OFFICIAL WARREN COMMISSION REPORT - as was THE IMPLOSION CONSPIRACY - were published by defendant Doubleday. In the course of its dealings with defendant Nizer over many years, relative to publication of his literary works, defendant Doubleday formed a high opinion of Mr. Nizer's reliability to gather and state facts correctly, to be fair in the handling of facts and to be an author of integrity.

THE IMPLOSION CONSPIRACY is, upon information and belief, a true account of a trial of an indictment handed down in the United States District Court for the Southern District of New York and the resulting verdict and sentencing of Julius and Ethel Rosenberg, charging them with passing to Soviet Russia the secrets of the device that triggered the atomic bomb. There was, attendant upon the trial, conviction and subsequent execution of Julius and Ethel Rosenberg, world-wide press coverage of these events and there has been ever since, continuing to the present time, substantial public interest in the aforesaid events. At the time of publication, and at all times thereafter, defendant Doubleday believed that all statements of fact contained in THE IMPLOSION CONSPIRACY were and are true and that

ANSWER OF DEFENDANT DOUBLEDAY & COMPANY, INC.

any comment upon said facts by the author was fair and reasonable. In publishing THE IMPLOSION CONSPIRACY, the defendant Doubleday conducted itself according to the usual practices then and now obtaining in the business of the publication of trade books. Defendant Doubleday, in publishing said book, was acting within the rights provided to it, as to all citizens, by the First Amendment to the Constitution of the United States. The context of the book consisted of matter the publication of which falls within the protection of the First Amendment to the Constitution of the United States.

WHEREFORE, Doubleday demands judgment dismissing the plaintiffs' complaint herein, together with costs and disbursements, and for such other and further relief as may be just and proper.

Dated: New York, N. Y.
July 24, 1973.

SATTERLEE & STEPHENS
Attorneys for defendant,
DOUBLEDAY & COMPANY, INC.

By 

A Member of the Firm

Office & P. O. Address
277 Park Avenue
New York, New York 10017

Telephone: (212) 826-6200

ORDER TO SHOW CAUSE, DATED MARCH 19, 1974.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x
MICHAEL MEEROPOL and ROBERT MEEROPOL, :
Plaintiffs, :
-against- 73 Civ. 2720
(HRT)
LOUIS NIZER and DOUBLEDAY & COMPANY, :
INC., : ORDER TO SHOW CAUSE
Defendants. :
-----x

Upon the complaint in an action entitled Michael Meeropol, a/k/a Michael Allen Rosenberg and Robert Meeropol, a/k/a Robert Harry Rosenberg v. Fawcett Publications, Inc., bearing file no. B-74-73 Civ. (JON) in the United States District Court, District of Connecticut, and the affidavit of Robert M. Callagy, sworn to March 19, 1974, and upon all papers and prior proceedings and upon hearing counsel for defendants and RT
ings had herein, ~~it is~~ New York counsel for plaintiffs, it is

ORDERED, that the plaintiffs show cause at a motion term of this Court, to be held in Room 2804, U. S. Court House, Foley Square, New York, New York, on the 22nd day of March, 1974, at HRT
12:00 o'clock ~~in the~~ noon of that day, or as soon thereafter as counsel can be heard, why an order should not be made herein staying all proceedings in the aforementioned Connecticut action until a final determination of this action; and it is further

ORDERED, that service of a copy of this order and the papers upon which it is based upon Marshall Perlin, Esq., 36 West 44th Street, New York, N. Y., and Samuel Gruber, Esq., 218 Bedford

ORDER TO SHOW CAUSE, DATED MARCH 19, 1974

HRT Street, Stamford, Connecticut, attorneys for plaintiffs, on or
5:00 p.m.
before March 19, 1974, shall be sufficient service of this order,
and in the meantime and until the hearing and determination of
this motion and the entry of an order thereon, it is further

HRT ORDERED, that all proceedings in the Connecticut action
be and they hereby are stayed until argument herein on March 22,
1974 as aforesaid.

Dated: New York, N. Y.
March 19, 1974.

at 12:40 p.m.

H. R. TYLER, JR.

U.S.D.J.

AFFIDAVIT OF ROBERT M. CALLAGY IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
MICHAEL MEEROPOL and ROBERT MEEROPOL, :

Plaintiffs, :

73 Civ. 2720
(HRT)

-against- :

LOUIS NIZER and DOUBLEDAY & COMPANY, :
INC., :

AFFIDAVIT

Defendants. :

-----X
State of New York
STATE OF NEW YORK)

COUNTY OF NEW YORK)

ss.:

ROBERT M. CALLAGY, being duly sworn, deposes and says:

1. I am a member of the firm of Satterlee & Stephens, attorneys for the defendant, Fawcett Publications, Inc. (Fawcett), in this litigation. I make this affidavit in support of an application by Fawcett to stay an action entitled Michael Meeropol a/k/a Michael Allen Rosenberg and Robert Meeropol a/k/a Robert Harry Rosenberg v. Fawcett Publications, Inc., bearing file no. B-74-73 Civ. (Judge J. O. Newman) (the Connecticut action), which the plaintiffs instituted on March 11, 1974 in the United States District Court for Connecticut.

2. As this Court is aware, my firm has been representing Doubleday & Company, Inc. (Doubleday) in this action (the New York action) since its inception -- June 19, 1973. Doubleday is the publisher of the hardcover edition of the book entitled THE IMPLOSION CONSPIRACY (the book), which is the subject of

AFFIDAVIT OF ROBERT M. CALLAGY IN SUPPORT OF MOTION

plaintiffs' claim for copyright infringement. Fawcett is the publisher of the paperback edition of the Book.

3. The complaint in the Connecticut action (a copy of which is annexed hereto as Exhibit A) is virtually identical to the first and third causes of action alleged by the plaintiffs in New York. The only difference between the complaints is that the Connecticut complaint omits a cause of action for alleged libel and invasion of privacy (COUNT TWO in the New York complaint), which cause of action is presently the subject of a motion for summary judgment.

4. Although nominally the defendants in the New York and Connecticut actions are different, because of indemnifications which have been extended from the author of the book to the publisher Doubleday, and in turn from Doubleday to Fawcett covering the paperback edition (a copy of the agreement between Doubleday and Fawcett dated April 27, 1973 by which the paperback rights to the book were licensed is annexed hereto as Exhibit B), each defense applicable to defendants Nizer and Doubleday in New York will equally be applicable to Fawcett in Connecticut. Conversely, plaintiffs will have to prove the identical facts in the Connecticut action as they will in New York.

5. This Court is equally aware of the extensive proceedings including discovery which have already occurred in the New York action and there is no reason to set them forth herein at length. Suffice it to say that since the issues in both the New York and Connecticut actions are identical, it would represent a great waste of judicial time as well as unnecessary time and expense to the parties to permit the conduct of identical proceed-

AFFIDAVIT OF ROBERT M. CALLAGY IN SUPPORT OF MOTION

ings in two fora since the issues are the same and the witnesses and documents necessary to prosecute and defend both actions will be the same. It will not only be burdensome to the defendants to defend identical claims on two fronts, but there is a possibility that the adjoining District Courts could render conflicting decisions on the same point which could adversely affect and confuse the rights and liabilities of the parties. For example, the plaintiffs in Connecticut seek to preliminarily enjoin the sale of Fawcett's paperback edition in spite of the fact that this Court in its decision denying the preliminary injunction stated that a preliminary injunction against the proposed paperback edition was not warranted (261 F. Supp. at 1067).

6. Although Fawcett is incorporated in Connecticut, it is qualified to do business here and has an office at 1515 Broadway, New York City. Conversely, plaintiffs have no connection with the District of Connecticut (they are residents of Massachusetts). Moreover, Fawcett has advised me that it would consent to jurisdiction in New York and accept service of a supplemental complaint naming Fawcett as a defendant by reason of its publication of the paperback book. Similarly, on behalf of defendants Doubleday and Nizer, I can represent that service of a supplemental complaint naming Fawcett as a defendant would be accepted.

7. Since plaintiffs chose to institute the first action in New York eight months ago actively litigating the case from its inception, and since New York is the closest nexus to the facts and issues in the case (virtually all the witnesses and documents

AFFIDAVIT OF ROBERT M. CALLAGY IN SUPPORT OF MOTION

are located here), there is no legitimate reason whatsoever for plaintiffs to have instituted a second action in Connecticut, other than to (1) harass defendants Nizer and Doubleday, who plaintiffs know are required to indemnify Fawcett; (2) avoid the prior decision of this Court which refused to preliminarily enjoin any paperback edition of THE IMPLOSION CONSPIRACY; or (3) seek in Connecticut a wider base of publicity for purposes of pursuing plaintiffs true intent in this lawsuit, i.e., seeking to exonerate their parents of the crime for which they were executed (a copy of an article appearing on the front page of THE NEW YORK TIMES on Sunday, March 9, 1974 in which plaintiffs again profess to retry their parents is annexed hereto as Exhibit C). None of these reasons is, of course, sufficient to permit the Connecticut action to proceed.

8. By reason of the foregoing, I respectfully request that this Court stay all proceedings in the Connecticut action until the termination or other disposition of this action.

9. No previous application for the relief sought herein has been made.

Robert M. Callagy
Robert M. Callagy

Sworn to before me this
19th day of March, 1974.

Mary A. Tzaniro
Notary Public

MARY A. TZANIRO
Notary Public, State of New York
No. 3059269
Qualified in Essex County
Commission Expires Dec. 1, 1979

55a

EXHIBIT A, ATTACHED TO AFFIDAVIT OF ROBERT M. CALLAGY.

Complaint in the District Court of Connecticut

(Printed, *infra*).

CREST
BOOKS

FAWCETT PUBLICATIONS, INC.

37 WEST 14TH STREET, NEW YORK, N.Y. 10036
1515 BroadwayPREMIER
BOOKS

MEMORANDUM OF AGREEMENT, entered into on April 27, 1973

between Fawcett Publications, Inc., of New York, N. Y. (hereinafter referred to as the Buyer), and...~~Donaldson and Company, Inc.~~...
whose address is...~~227 Mark Avenue, New York, N.Y. 10017~~...
(hereinafter referred to as the Seller).

PLEASE



INITIAL

PLEASE



INITIAL

Restriction

or other

rights

\$2.50

PLEASE

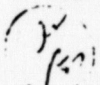


the Buyer shall be permitted by the Seller to liquidate its existing stock of the book. If the Buyer has not sold a certain amount of said book during the license term and prior to its receipt of any termination notice, the Buyer shall be permitted by the Seller to complete the said printing and liquidate the stock when it is available. Liquidation should be within two years. Termination of this agreement shall be without prejudice to the Seller's rights to monies payable hereunder.

Publication

date

PLEASE



INITIAL

5. The Buyer agrees not to publish the book prior to February 1974 * nor later than...~~September 1976~~... The Buyer may, however, advance or delay its edition to two months prior to the date of the first scheduled release of a motion picture based on the book. If the Buyer shall fail to publish the book within the time provided in this paragraph, except in the event publication is delayed to coincide with the motion picture based on the book, the Seller may terminate this agreement by written notice which shall become effective six (6) months after receipt thereof by the Buyer unless the book is published before the expiration of that period. Upon such termination all rights granted hereunder shall revert to the Seller and the Buyer shall not be liable to the Seller by reason of such non-publication of the book, and the Buyer shall not be required to make any payment of money to the Seller other than the minimum royalty amount which is provided for in this contract as referred to in paragraph 6 hereof.

6. The Buyer agrees to pay to the Seller the sum of \$335,000, payable \$111,667 on signing of this contract, \$111,667 on the date of publication of the Buyer's edition of the book, and \$111,666 six (6) months after publication of the Buyer's edition of the book, as an advance against royalties to be earned at the following rates: on copies sold in the United States and Canada twelve and one half per cent (12 1/2%) of the retail price on the first 500,000 net copies sold, and fifteen per cent (15%) of the retail price on all net copies sold thereafter; on copies sold outside continental United States and Canada four per cent (4%) of the retail price per net copy sold. The royalty payable on copies sold to commercial firms for use or resale by them in connection with the sale of their own products, or of damaged copies, shall be five per cent (5%) of the net amount received by the Buyer, except that no royalty shall be paid on any such copies sold at or below cost. In the event the Buyer disposes of copies of the book to a Book Club (after having obtained the written consent of the Seller), the Seller agrees to accept royalty amounting to four per cent (4%) of the retail price on all copies used by said Club. It is also agreed that no royalty shall be paid on copies destroyed, or given away to promote the sale of the book.

PLEASE



*and not before the book is off the New York Times Bestseller list for six (6) consecutive weeks and selling more than 1,000 copies per week for six (6) consecutive weeks. In any event the Buyer may publish its edition eight (8) months after publication of the trade edition.

EXHIBIT R

PLEASE



INITIAL

Payments

PLEASE



INITIAL

Open

PLEASE



INITIAL

PLEASE



INITIAL

PLEASE



INITIAL

PLEASE



INITIAL

7. The Seller warrants that the rights herein granted to the Buyer are owned by the Seller and are not subject to any prior contracted right or lien which may interfere with the rights of the Buyer hereunder; also that the book does not infringe upon any statutory or other copyright, or any right of others whatsoever; also that the book contains no matter which is contrary to law. The Seller will hold the Buyer harmless against any loss or expense, including counsel fees incurred, arising out of any breach or alleged breach of any of the foregoing warranties. In defending against any claim based on such breach or alleged breach, the Buyer shall have the right to select counsel.

8. The Buyer shall render statements and make payments to the Seller as follows:

Statements rendered
and payments made

For the period

March 31

July 1 - December 31

September 30

January 1 - June 30

9. The Seller agrees to waive the additional advance due on publication guaranteed hereunder if the Buyer shall be unable to publish and/or distribute the book on account of any factors beyond the Buyer's control, including, by way of example, the unavailability of labor, materials, ~~the unavailability of labor, materials, or because of strikes,~~ or because of strikes, war, invasion or civil riot.

~~XXXXXXXXXX The Seller agrees to submit to the Buyer a copy of the next published book by the same author for which the Seller has a contract, with the understanding that any future editions of such book shall be published by the Buyer. If the Seller should be unable to publish such book, the Seller shall be obligated to submit to the Buyer a copy of the next published book by the same author for which the Seller has a contract, with the understanding that any future editions of such book shall be published by the Buyer. If the Seller should be unable to publish such book, the Seller shall be obligated to submit to the Buyer a copy of the next published book by the same author for which the Seller has a contract, with the understanding that any future editions of such book shall be published by the Buyer.~~

11. The Seller shall furnish to the Buyer upon the signing of this agreement, without cost to the Buyer, ~~XXXXXX~~ copies of the trade edition of said book. The Buyer agrees to print on the copyright page of each book the copyright notices as contained in the said trade edition. The Buyer, at its option, may include any illustrations in the text or on the cover, or any material relating to the book which appears on the jacket of the trade edition thereof, provided they are the property of the Seller, and any cover illustration and cover copy selected by the Buyer with the approval of the Seller.

12. This agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, legal representatives and assigns. This agreement cannot be assigned without the written consent of the Seller.

The marginal notes are for convenience only and do not constitute part of this agreement.

13 and 14 See Below.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement the day and year first above written.

In the presence of:

FAWCETT PUBLICATIONS, INC.

By *[Signature]*

DOUBLEDAY & COMPANY, INC.

Seller

By *[Signature]*

The foregoing warranties and indemnities are confined solely to the reproduction of the content and context of the Seller's edition of the work and shall under no circumstances apply to any claim, litigation or loss occasioned, influenced or contributed to by any other material or treatment.

15. The Buyer also agrees to include the following credit notice in its edition of the book: "Published by arrangement with Doubleday and Company, Inc." or wording to that effect.

ADD HERE TO CLAUSE 11

In the event that the Seller controls the sale or licensing of the British Empire rights in this work the Seller will as a condition of any sale or license to a British publisher provide that such British publisher may not publish or license the publication of a British paperback edition of this work prior to one (1) year after a British hardcover publication. If the Seller doesn't control said sale or licensing, the Seller agrees to use its best efforts to see that there shall be no Open Market paperback edition prior to the Buyer's edition.

In the event a British paperback edition of the work is published in the Open Market or reasonable evidence exists that such publication is being contemplated in the Open Market prior to the date permitted herein for the Buyer's release of its edition, the Buyer shall be permitted to publish its edition in the Open Market after first advising the Seller in writing of such competitive Open Market edition being published or about to be published. It is understood that pursuant to this paragraph the Buyer may not release its domestic edition until such time as is provided elsewhere in this agreement.

PLEASE



INITIAL

14. The Buyer agrees not to place any advertising in its edition of the book other than ads or copy for Book Clubs or periodicals or other books published by the Buyer without the consent of the Seller.

LD LIBRARY

Agreement

Books

FAWCETT PUBLICATIONS, INC.

EXHIBIT C, ATTACHED TO AFFIDAVIT OF ROBERT M. CALLAGY.

SUNDAY TIMES MARCH 10, 1974



Michael, 10, left, and Robert Rosenberg, 6, in 1953

Associated Press



Michael and Robert in Springfield, Mass.

The New York Times/Arthur Grace

2 Rosenberg Sons Try to Vindicate Executed Parents

By ROBERT REINHOLD

Special to The New York Times

SPRINGFIELD, Mass., March 9—For 20 years they have lived in quiet obscurity: going to college, venturing into radical politics and student protests, then marrying and rearing children. But for Michael and Robert Meeropol, growing up in America was not quite the same as for most young people, for they carried a searing childhood memory that would not go away.

The two young men are the sons of Julius and Ethel Rosenberg, the couple executed for conspiring to pass atomic se-

crets to the Soviet Union. Now, two decades after their mother and father died in the electric chair at Sing Sing one sultry Friday evening in June of 1953, the brothers believe the time has finally come for them to emerge from obscurity to try to clear the names of their parents.

"We knew that some time we would have to do this," said Michael, who will be 31 years old tomorrow.

"We feel a strong responsibility to our parents," added Robert, now 26. "We feel they

are innocent. It is impossible for us not to talk about it at this point."

The immediate impetus for sacrificing some of their treasured privacy was the publication last year of "The Implosion Conspiracy," a best-selling book about the controversial Rosenberg trial by Louis Nizer. The brothers have sued Mr. Nizer and Doubleday & Company, his publisher, for unauthorized use of their parents' copyrighted death-house letters. Last Monday, in Hartford, they also filed suit against Fawcett Publications, publishers of the paperback edition.

But they also believe that the recent Watergate revelations—with charges of high-level criminal conspiracies and of cover-up and perjury in the name of national security—have lent new credence to their long-held contention that the Rosenbergs were the victims of a Communist hysteria during the cold war.

Poignant pictures of the Rosenberg children, 10 and 6 at the time of the execution,

Continued on Page 41, Column 1

Caribbean Apartments from \$25.00 Daily
P.P. Call House, Inc. AL 3-3410, Advt.

House Tours, Homeowners' Seminars,
Laurelton Residents Tel. Open House
LA 7-0400—Advt.

EXHIBIT C, ATTACHED TO AFFIDAVIT OF ROBERT M. CALLAGY

Continued From Page 1, Col. 5

were seen by millions throughout the world during the legal battle to save them in the nineteen-fifties. Later they were adopted by Abel Meeropol, a former New York teacher and song writer whose name they had taken, and disappeared from public view.

No Obvious Scars

If their ordeal has left any permanent psychological scars, they are not readily apparent. The boys have matured to articulate and seemingly well-adjusted young men who share the easygoing life-style and rumpled look of junior faculty members at a New England college, which is what they are. They agreed to an interview on the condition that the discussion focus on their present aims and the Rosenberg case rather than their memories or emotional state.

Michael, with a warm ready smile and long unruly brown hair and mustache, teaches economics at Western New England College, a small private school here. He and his wife Ann are the parents of two children, Veronica Ethel, 5, and Gregory Julian, 4. He holds a brand-new Ph.D. in economics from the University of Wisconsin, where he went after graduating from Swarthmore College. The family lives modestly, driving around in a dirty white Volvo bearing a bumper sticker "Don't Blame Me I Voted McGovern."

Robby, as the younger brother is called, is taller, darker and more intense looking. He attended Earlham College and the University of Michigan, where he took a master's degree in anthropology. He teaches anthropology part-time at Western New England, and he and his wife Ellen have a 17-month-old infant, Jennifer Ethel.

Treated Like Celebrities

It is perhaps an indication of how times have changed that after their identity was disclosed last June when the suit against Mr. Nizer made page 1 news locally here, there was hardly a ripple at the college. In fact, they were treated like celebrities.

"We thought it was pretty good because the college got in the papers," said a secretary at the school.

The brothers share an obvious affection for each other and think so much alike that one often completes a thought begun by the other. Though it has been very painful for them, they have read almost everything written about the case and they unemotionally dissect the evidence and nagging doubts like lawyers preparing an appeal.

Though the Rosenbergs lost all appeals, the sons believe the continuing doubts today are strong enough to reopen the case. They see a "Warren commission style" investigation, perhaps ordered by Congress, but the legal basis is not clear.

They are "coming out" just as the case is gaining renewed public attention. In addition to the Nizer book, which concludes that the Rosenbergs were guilty, there have been two recent television documentaries, "The Trial of Julius and Ethel Rosenberg" by Stanley Kramer and "The Unquiet Death of Julius and Ethel Rosenberg," a public television production that underscores many of the doubts.

Meanwhile, a Smith College historian has been trying to obtain the Federal Bureau of Investigation files on the case. Even though ordered to release them by the Attorney General last July, the F.B.I. still retains them, further fueling the Meeropol brothers' conviction that the case against their parents was contrived.

Michael agrees that most Americans probably still believe the Rosenbergs still guilty, but that with passing time many have also come to wonder if the execution was not a dreadful mistake made possible by McCarthyism, which many now view with a tinge of regret and shame.

Finds It Unbelievable

"It's so unbelievable," said Robby. "It's very hard to believe people could swallow this now."

But in 1951 the Rosenbergs were pictured as arch-Communist traitors who had divulged the secret of the atomic bomb to the Russians, thereby helping to start the Korean war and compromising the nation in the "life and death struggle with a completely different system," in the words of Judge Irving R. Kaufman, who condemned them.

Today the Rosenberg sons have arrived at an equally harsh judgment of the chief Government prosecutors, Irving H. Saypol and Roy M. Cohn.

The brothers say they invite a libel suit that would give them the subpoena power they want to reopen the case.

Mr. Saypol, now a Supreme Court justice in New York, ignored a request for comment left with his law secretary. Mr. Cohn, who gained fame as an aide to the late Senator Joseph R. McCarthy and now practices law in New York, terms the charge "wild, emotional and unsubstantiated."

For Political Reasons

Beyond personal vindication the sons believe their parents should be cleared for larger political reasons.

"We hope that people will understand that what we are doing is part of a larger process," said Robby. "For the last 20 years one of the cornerstones of American policy has been the false domestic security argument. We feel that there is a crucial linkage here between Watergate and the trial."

They argue that the violations of due process and civil rights visited on Democrats and other dissenters by the Watergate defendants and the "plumbers" in the name of national security had its genesis in the cold war and in the prosecution of their parents.

To stimulate further public interest, the sons are negotiating with publishers to print 250 still unpublished letters of the Rosenbergs, who maintained their innocence to the very end. But the sons say they will not answer the questions are put to a test.

"We want to show they are innocent," said Robby. "Not just that there are questions."

COMPLAINT IN CONNECTICUT ACTION AGAINST FAWCETT.

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF CONNECTICUT

MICHAEL MEEROPOL, also known as MICHAEL ALLEN
ROSENBERG and ROBERT MEEROPOL, also known as
ROBERT HARRY ROSENBERG,

Plaintiffs

vs.

FAWCETT PUBLICATIONS, INC.

Defendant.

Civil No.

FILED
JUN 15 1974
U.S. DISTRICT COURT
NEW HAVEN, CONN.

COMPLAINT

Plaintiffs, MICHAEL MEEROPOL, also known as MICHAEL ALLEN
ROSENBERG and ROBERT MEEROPOL, also known as ROBERT HARRY
ROSENBERG, by their attorney, Samuel Gruber allege:

1. This action arises under the United States Copyright
Laws and pursuant to 17 U.S.C. Section 101. This Court has
jurisdiction of this action pursuant to 28 U.S.C. §§1331(a)
and 1338 (a) and (b).

2. The plaintiffs, are citizens of the Commonwealth of
Massachusetts. The defendant FAWCETT PUBLICATIONS, INC., is a
Delaware Corporation authorized to do business in the State of
Connecticut with its principal office and place of business
in Greenwich, Connecticut. The matter is controversy, exclusive
of interest and costs, exceeds the sum of Ten Thousand (\$10,000.00)
Dollars.

COMPLAINT IN CONNECTICUT ACTION AGAINST FAWCETT

3. Plaintiffs, MICHAEL MEEROPOL and ROBERT MEEROPOL, were born under the names of Michael Allen Rosenberg and Robert Harry Rosenberg, respectively, and are the natural issue of Julius and Ethel Rosenberg, and the sole heirs and legatees under the Last Will and Testaments of Julius and Ethel Rosenberg. The plaintiffs' natural parents were convicted for violating 50 U.S.C. §34, and sentences of death were imposed on April 5, 1951 by Irving R. Kaufman, then a judge of the United States District Court for the Southern District of New York. On June 19, 1953 the sentences were carried out and the parents of the plaintiffs were executed at the New York State Penitentiary in Ossining, New York.

4. From July and August of 1950 when Julius and Ethel Rosenberg were first arrested, until their execution, they engaged in an extensive exchange of personal letters with each other, with their children, the plaintiffs herein, with their attorney, Emanuel H. Bloch, and with others to the extent that they were able to do so and in light of prison restrictions imposed upon them.

5. Ethel and Julius Rosenberg delivered said letters to their attorney, Emanuel H. Bloch, and orally assigned their common law copyright thereto to him to hold and secure the same in behalf of themselves and their children the plaintiffs herein.

COMPLAINT IN CONNECTICUT ACTION AGAINST FAWCETT

The Rosenbergs thereafter authorized and directed that Mr. Bloch turn over a portion of these letters to a corporation to be organized by him, which corporation was to be empowered and authorized to publish and copyright the same and to hold the remainder of such letters in trust in behalf of the plaintiffs. The plaintiffs are presently in possession of Rosenberg letters.

6. On April 6, 1953, Emanuel H. Bloch organized Jero Publishing Company, Inc., a New York Corporation (hereinafter referred to as JERO) with its principal place of business at 220 Broadway, County, City and State of New York. Mr. Bloch was the sole stockholder of JERO and at the request of Ethel and Julius Rosenbergs and with their knowledge, consent and approval, and for the benefit of their children arranged for the printing, publication, distribution and sale of a book made up of certain of said letters of the Rosenbergs, entitled DEATH HOUSE LETTERS OF ETHEL AND JULIUS ROSENBERG (hereinafter DEATH HOUSE LETTERS).

7. The DEATH HOUSE LETTERS was published by JERO under date of June 1953 with United States Copyright Notice duly affixed thereto and was registered for copyright in its name in the United States Copyright Office under date of June 24, 1953, Registration No. A 96637.

COMPLAINT IN CONNECTICUT ACTION AGAINST FAWCETT

8. The contents of said book were a portion of the original letters written by the Rosenbergs, citizens of the United States, and are of high literary quality and uniqueness. The contents of the Death House Letters were and are copyrightable subject matter under the laws of the United States.

9. Since June 10, 1953, said book had been published by JERO, in behalf of plaintiffs herein, and all copies of it made by JERO or under its authority or license were printed, bound and published in strict conformity with the provisions of the United States Copyright Law and all other laws covering copyright.

10. JERO licensed other publishers throughout the world to publish some or all of the contents of said book DEATH HOUSE LETTERS.

11. JERO published subsequent editions of said book under the same title and such book with addenda under the title THE TESTAMENT OF ETHEL AND JULIUS ROSENBERG, with United States Copyright Notice duly affixed thereto.

12. On August 19, 1953, a written trust was established under the terms of which Emanuel H. Bloch was the initial trustee and was thereafter joined by Shirley Graham, also known as Shirley Graham Du Bois, Yuri Suhl, James Aronson and Malcolm Sharp as co-trustees under the aforesaid trust instrument.

COMPLAINT IN CONNECTICUT ACTION AGAINST FAWCETT

Said trust is known and identified as The Rosenberg Children's Trust Fund (hereinafter referred to as Trust Fund). The named beneficiaries of said trust fund were the children of Julius and Ethel Rosenberg, MICHAEL ALLEN ROSENBERG and ROBERT HARRY ROSENBERG, the plaintiffs herein.

13. Emanuel H. Bloch died on January 30, 1954 and Gloria Agrin a/k/a Gloria Josephson succeeded him as a successor trustee of the Trust Fund. The Trust Fund was the sole stockholder of JERO.

14. On January 3, 1957, a certificate of dissolution was filed by JERO pursuant to Article 10 of the Stock Corporation now of the State of New York. Said certificate was signed by its sole stockholder, the Trust Fund by all of its five trustees. A Certificate of Dissolution was issued by the Secretary of State of the State of New York on January 25, 1957. All assets of the corporation, including the aforesaid copyright and all rights associated therewith and any rights that said corporation had or may have had in the letters, correspondence and writings of Julius and Ethel Rosenberg thereby passed to the Trust Fund.

15. The Trust Fund, under its terms and by the powers vested with the trustees, was terminated on January 28, 1968 and all of the assets of the Trust Fund were given, conveyed and assigned to the plaintiffs herein. Since that time, to reflect the above, the Trust Fund and JERO have duly assigned,

COMPLAINT IN CONNECTICUT ACTION AGAINST FAWCETT

transferred and set over, in writing, all copy-right interests, including the specific copyright referred to hereinabove and any related rights pertaining to said copyright, all right, title and interest in and to said copyright, and any other copyright interest based thereon, and all renewals and extensions thereof that may be secured now or in the future, and any and all other rights relating to the works encompassed by the said copyright, and any and all rights in and to all letters correspondence of the Rosenbergs, and including, but not limited to, any and all causes of action theretofore accrued in favor of JERO and the Trust Fund for infringement of and damage to the aforesaid rights and copyrights, to the plaintiffs herein, and constituting and appointing the plaintiffs herein as lawful attorneys-in-fact of the aforesaid assignors with all powers and rights held by them. Said assignment is recorded under date of September 9, 1973 in Volume 1489 of the Copyright Register at pages 342-348, 349-355, 356-362.

16. Since January 20, 1968, the plaintiffs have been and still are the sole proprietors of all rights, title and interest in and to the copyrighted book entitled DEATH HOUSE LETTERS OF ETHEL AND JULIUS ROSENBERG. The plaintiffs have been and are the sole proprietors - both legal and equitable - of all rights, title and interest in and to the contents of such book published under the title aforesaid, published under the title THE TESTAMENT OF ETHEL AND JULIUS ROSENBERG (1954) and published under other titles.

66a

17. In 1973 a book entitled THE IMPLOSION CONSPIRACY, written by Louis Nizer of New York City was published in hard cover edition by Doubleday & Company, Inc. a New York corporation. Nizer and Doubleday, acting in concert and conjunction, published, printed, sold and placed upon the market throughout the United States said book THE IMPLOSION CONSPIRACY in which was included material copied from the plaintiff's aforesaid copyrighted book DEATH HOUSE LETTERS.

18. After publication of THE IMPLOSION CONSPIRACY on February 9, 1973, the plaintiffs in June 1973 instituted an action in the United States District Court for the Southern District of New York against the said Nizer and Doubleday seeking, inter alia, a temporary and permanent injunction restraining them from infringing upon plaintiffs' copyright in the Rosenberg letters and from publishing, selling or disposing of THE IMPLOSION CONSPIRACY. Said action is presently pending in said court bearing Index No. 73 Civ. 2720 (HRT). Plaintiff's motion for a temporary injunction was denied by the United States District Court (Tyler, J.) on July 18, 1973, 361 F. Supp. 1063.

19. Thereafter, on or about December 7, 1973, plaintiffs through their attorney, Marshall Perlin, Esq. of New York City, N.Y. became aware that Nizer and Doubleday or both had entered into an agreement or arrangement with the defendant herein FAWCETT which provided, inter alia, for publication and distribution by FAWCETT of a paperback edition of THE IMPLOSION CONSPIRACY.

20. The exact terms and conditions of said agreement or arrangement are unknown to the plaintiffs but on information and belief, the paperback edition would contain the complete text of the hard cover edition of THE IMPLOSION CONSPIRACY and would thereby contain material copied and appropriated from plaintiffs' copyrighted book DEATH HOUSE LETTERS.

21. On December 7, 1973, the plaintiffs through their aforesaid attorney Marshall Perlin wrote to the defendant FAWCETT by certified mail return receipt requested, requesting that it cease and desist from the printing, publication or distribution of the contemplated paperback edition of THE IMPLOSION CONSPIRACY. The text of the communication to the defendant is as follows:

President's Office
Fawcett Publications, Inc.
Fawcett Place
Greenwich, Connecticut

Re: THE IMPLOSION CONSPIRACY
by Louis Nizer

Gentlemen:

It has just been brought to my attention that your company is contemplating publishing and distributing a paperback edition of the above book which has previously been published by Doubleday & Company, Inc.

For your attention I enclose herewith a letter I had previously written to Doubleday & Company, Inc. on May 10, 1973. I also enclose a copy of a complaint in an action which has been instituted by my clients, Michael Meeropol and Robert Meeropol, children of Ethel and Julius Rosenberg, for your attention. This action is now pending in the United States District Court for the Southern District of New York bearing Index No. 73 Civ. 2720(HRT).

COMPLAINT IN CONNECTICUT ACTION AGAINST FAWCETT

Were you to publish the above book, your action too would be in violation of my clients' rights, statutory and otherwise.

Please take notice that you are asked to cease and desist from the printing, publication or distribution of the book since such action would constitute a repetition and expansion of the wrongs already done for which you would be fully accountable to my clients.

I should appreciate hearing from you upon receipt of this letter with enclosures and further your advising me whether the information I have previously received of your plans with regards to publication of the book is accurate. If so, whether you will comply with the demand made herein.

If you should have any questions, I should appreciate hearing from you forthwith.

22. The defendant FAWCETT had not, prior to the date of this complaint replied to said communication dated December 7, 1973 and had failed to apprise the plaintiffs of its intentions with respect to the publication and distribution of a paperback edition of THE IMPLOSION CONSPIRACY although fully informed of the plaintiffs' claims that publication and distribution of such an edition would infringe upon plaintiffs' copyright as aforesaid.

23. The defendant FAWCETT had caused advertisements to be inserted in trade publications such as Publishers Weekly and elsewhere announcing publication of the paperback edition of THE IMPLOSION CONSPIRACY by Louis Nizer for some time in March 1974 in a first printing of 800,000 copies, and threatened to sell and market such edition throughout the United States.

COMPLAINT IN CONNECTICUT ACTION AGAINST FAWCETT

24. The defendant FAWCETT had full knowledge and notice of the existence of plaintiffs' copyright and the claims of the plaintiffs' with respect thereto. Notwithstanding such notice and knowledge the defendant FAWCETT wilfully, knowingly and maliciously published said paperback edition late in February 1974, and commenced to market, sell and distribute it in great quantities throughout the United States thereby wilfully, knowingly and maliciously infringing upon plaintiffs' copyright, all to the damage of the plaintiffs and the plaintiffs' copyright property. A copy of plaintiffs' copyrighted book is attached hereto as Exhibit A, and a copy of the defendant's paperback infringing book is attached hereto as Exhibit B. By way of example only, a number of instances of such infringements are cited:

- a) LETTER OF NOVEMBER 1, 1951
DEATH HOUSE LETTERS, page 75
THE IMPLOSION CONSPIRACY, page 460 (excerpt)
- b) LETTER OF JULY 25, 1951
DEATH HOUSE LETTERS, page 50
THE IMPLOSION CONSPIRACY, page 447 (excerpt)
- c) LETTER OF JULY 25, 1951
DEATH HOUSE LETTERS, page 52
THE IMPLOSION CONSPIRACY, page 447 (excerpt)
- d) LETTER OF SEPTEMBER 15, 1952
DEATH HOUSE LETTERS, page 75
THE IMPLOSION CONSPIRACY, page 464

25. The defendant FAWCETT prior to publication of its paperback edition of THE IMPLOSION CONSPIRACY which contains the complete text of the original hard cover edition published by Doubleday made no attempt to obtain permission from the plaintiffs to cite and quote verbatim from the aforesaid letters

COMPLAINT IN CONNECTICUT ACTION AGAINST FAWCETT

although they were aware of the plaintiffs written claims to copyright ownership at least since December 7, 1973 and had public notice of said copyright since June 1953 and of the assignment of the copyright to the plaintiffs by virtue of the recordation of said assignment in the Copyright Register as aforesaid on September 9, 1973.

26. On information and belief, the defendant FAWCETT, prior to its printing, publication and distribution of the aforesaid paperback edition of THE IMPLOSION CONSPIRACY, made no independent attempt to investigate or engage in any research on the copyright ownership of the Rosenberg letters contained in its book, even though it had been advised of the plaintiffs' rights as copyright owners and their demand that the defendant FAWCETT cease and desist from the printing, publication and distribution of said book.

27. The defendant has published and is continuing to publish and distribute said paperback edition in which some of the copyrighted letters appear verbatim but other of such letters appear in excerpted form only, which excerpts are so chronologically misplaced and so made as to alter the meaning and import of the complete letter.

28. The unauthorized, deliberate and verbatim use and appropriation of said letters, as well as the excerpts as aforesaid by the defendant FAWCETT, which letters were the literary product and property of the Rosenbergs was and is illegal and unlawful. Said unauthorized, deliberate and verbatim use and appropriation of the letters and excerpts thereof was done and is being done in order to capitalize on

COMPLAINT IN CONNECTICUT ACTION AGAINST FAWCETT

the literary value and artistic quality of said letters. The Rosenberg letters misappropriated by the defendant FAWCETT have a major qualitative impact on and are an essential and vital portion of the defendant's book avowedly recognized and acknowledged by the defendant on the cover thereof (see back cover of Exhibit A hereto attached) which describes the book as "both a stunning courtroom thriller and a profound and moving love story". The defendant's characterization of the paperback edition of The IMPLOSION CONSPIRACY as a profound and moving love story is based primarily and principally on the use made by the defendant of said copyrighted letters.

29. The plaintiffs, in addition to being the sole owners of the copyrighted property referred to hereinabove, are also the sole owners of all of the remaining writings and correspondence of their parents, Ethel and Julius Rosenberg, which have not heretofore been published or disseminated. The plaintiffs intended and intend to publish and copyright said writings of their parents not heretofore published and copyrighted and intended and intend to do the same in connection with the aforesaid copyrighted material.

30. As a result of the conduct of the defendants complained of hereinabove, the plaintiffs' property, consisting of the writings of their parents, Julius and Ethel Rosenberg, not heretofore published or copyrighted, have been damaged and impaired and by reason thereof plaintiffs have suffered substantial damages.

COMPLAINT IN CONNECTICUT ACTION AGAINST FAWCETT

31. The plaintiffs have made no previous application for the relief hereinafter sought against the defendant FAWCETT.

WHEREFORE, the plaintiffs pray that this Court grant the following relief:

(1) That defendant, FAWCETT, its agents, attorneys and employees, and those acting in its behalf and in concert with it be enjoined, during the pendency of this action and permanently, from infringing said copyrights of plaintiffs in any manner and from publishing, selling, marketing or otherwise disposing of any copies of the paperback book entitled THE IMPLOSION CONSPIRACY.

(2) That the defendant, FAWCETT, be required to deliver up to be impounded during the pendency of this action all copies of said paperback book entitled THE IMPLOSION CONSPIRACY in its possession or under its control, and to deliver up for destruction all infringing copies and all plates, moulds and other matter for making such infringing copies, until all parts of the book containing the copyrighted material and the letters of Ethel and Julius Rosenberg or any portions thereof and reference thereto are removed, and that such pages and portions thereof removed from the book be destroyed.

(3) That Defendant, FAWCETT, be required to deliver up to be impounded during the pendency of this action all promotional and advertising material used by the defendant or by others in its behalf in promoting the sale of the paperback book THE IMPLOSION CONSPIRACY which contain any references, directly or indirectly, to the letters of Ethel and Julius

COMPLAINT IN CONNECTICUT ACTION AGAINST FAWCETT

Rosenberg, and the aforesaid copyrighted material of the plaintiffs.

(4) That defendant, FAWCETT, be directed to delete and remove from all copies of the book in the process of being printed, reproduced or published and all copies heretofore printed, reproduced and published all of the copyrighted writings of the plaintiffs and any references thereto, and that defendant deliver up to be impounded during the pendency of this action such deleted and removed pages and portions thereof.

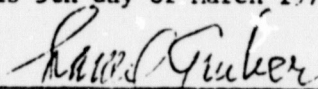
(5) That the defendant FAWCETT, account for all gains, profits and advantages derived by it from its infringement of plaintiffs' copyright, and derived from its trade practices and unfair competition as aforesaid.

(6) Damages against the defendant, FAWCETT, in the amount of One Million (\$1,000,000) Dollars.

(7) The defendant FAWCETT pay to plaintiffs the costs of this action and reasonable attorneys fees be allowed to the plaintiffs.

(8) Such other and further relief as the Court may deem just and proper.

Dated at Stamford, Connecticut, this 5th day of March 1974.



Samuel Gruber
218 Bedford Street
Stamford, Connecticut 06901
Attorney for Plaintiffs

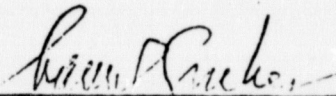
COMPLAINT IN CONNECTICUT ACTION AGAINST FAWCETT

VERIFICATION

STATE OF CONNECTICUT)
) ss. Stamford
COUNTY OF FAIRFIELD)

March 5, 1974

Personally appeared Michael Meeropol, also known as Michael Allen Rosenberg, and Robert Meeropol, also known as Robert Harry Rosenberg, both of the Commonwealth of Massachusetts plaintiffs in the above entitled action and made oath to the truth of the matters contained in the within complaint except as to the matters therein stated to be alleged on information and belief, and as to these matters they believe them to be true.



Samuel Gruber
Commissioner of Superior Court

DEMAND FOR JURY TRIAL IN CONNECTICUT ACTION.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

MICHAEL MEEROPOL, also known)
as MICHAEL ALLEN ROSENBERG)
and ROBERT MEEROPOL, also)
known as ROBERT HARRY ROSENBERG,)

Plaintiffs)

vs.)

FAWCETT PUBLICATIONS, INC.,)

Defendant)

CIVIL ACTION NO. B-74-73

DEMAND FOR JURY TRIAL

To: FAWCETT PUBLICATIONS, INC.
Fawcett Building, Fawcett Place
Greenwich, Connecticut 06803

Please take notice that plaintiffs demand
trial by jury in this action.

Samuel Gruber
Attorney for plaintiffs
218 Bedford Street
Stamford, Conn. 06901

CERTIFICATE OF SERVICE

This is to certify that service of the within demand for jury trial was made by mailing a true copy thereof, U.S. Mails, postage prepaid to Fawcett Publications, Inc., Fawcett Building Fawcett Place, Greenwich, Conn. 06803. Registered Mail, Return receipt requested.

AMENDED COMPLAINT IN CONNECTICUT ACTION AGAINST FAWCETT.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

MICHAEL MEEROPOL, also known)
 as MICHAEL ALLEN ROSENBERG)
 and ROBERT MEEROPOL, also)
 known as ROBERT HARRY ROSENBERG,)

Plaintiffs)

vs.)

FAWCETT PUBLICATIONS, INC.,)

Defendant))

CIVIL ACTION NO. B-74-73

AMENDMENT OF COMPLAINT

Plaintiffs amend their complaint, as of course, under the provisions of Rule 15(a) in the following respects:

1. By designating Paragraphs 1-31 of the Complaint as "Count I".
2. By adding to the Complaint a new Count to be designated as Count II as follows:

COUNT II

32. Plaintiffs' repeat and renlige each and every allegation contained in Paragraphs 1-31 of the Complaint with the same force and effect as if fully set forth therein.

33. The defendant FAWCETT has printed, published, distributed and sold said paperback edition of THE IMPLSION CONSPIRACY in great numbers throughout the United States.

34. The book, while purporting to be an accurate and detailed account of the legal proceedings in the case in which

AMENDED COMPLAINT IN CONNECTICUT ACTION AGAINST FAWCETT

the plaintiffs' parents were involved, by omission and misinterpretation gives a distorted and misleading account of significant legal aspects thereof.

35. In addition the book relates statements, conversations and events, not reflected in the legal proceedings, involving the plaintiffs independently and as well their relationship with their parents and others, and purports to set forth motives, attitudes and feelings of both the plaintiffs and their parents in such relationship.

36. Said statements, conversations and events were false, fictitious, inaccurate and distorted. By malicious use thereof the defendant FAWCETT sought to portray and did portray the plaintiffs in their interrelationship with their parents as having been deserted and rejected by their parents; that the plaintiffs were manipulated and used by their parents and others for various illegal and nefarious purposes; and that as a result thereof the plaintiffs disassociated themselves from and rejected their parents and what they stood for, and that contrary to the way of life of their parents, the plaintiffs have taken to live as "normal decent citizens".

37. In said paperback edition and in order to deceive the reader and impress the public with the authenticity and credibility of the aforesaid false, fictitious and distorted statements, conversations and events regarding the plaintiffs as well as their parents, the defendant FAWCETT used, copied and excerpted substantial portions of the copyrighted material hereinbefore referred to, and used such copyrighted material along with

AMENDED COMPLAINT IN CONNECTICUT ACTION AGAINST FAWCETT

said false, fictitious and inaccurate and distorted statements, conversations and events to embarrass, humiliate and ridicule the plaintiffs, and to denigrate the relationship between them and their parents.

38. By reason of the foregoing the plaintiffs' have been held up to ridicule, embarrassment and humiliation, injury has been caused to them and their immediate family including their children, and to their capacity to function as citizens in their present and future employment and professional performance and in relationship to others now and in the future, all to the great damage of the plaintiffs as an invasion of their privacy and their right to be left alone.

39. By at least December 7, 1973 and on information and belief for a long time prior thereto the defendant FAWCETT was aware and fully cognizant of the fact that the plaintiffs herein were asserting and setting forth their claims, among others, that the hardback edition of THE IMPLOSION CONSPIRACY and the contents thereof, particularly the aforesaid recitals of statements, conversations and events regarding the plaintiffs as well as their parents were false, fictitious, inaccurate and distorted and were illegal invasions of the plaintiffs' right of privacy and their right to be left alone. The defendant FAWCETT by at least December 7, 1973, was aware that such claims had been fully set forth by the plaintiffs in the complaint in the aforesaid action in the Southern District of New York bearing Index No. 73 Civ. 2720(HRT).

AMENDED COMPLAINT IN CONNECTICUT ACTION AGAINST FAWCETT

40. Notwithstanding such knowledge and notice, the defendant FAWCETT in reckless disregard of his duty to investigate the truth or falsity of such statements, conversations and events, printed, published, distributed and sold the paperback edition of THE IMPLOSION CONSPIRACY containing the verbatim text thereof without seeking or attempting to obtain prior consent, approval or information from the plaintiffs who were known to the defendant and to whom such statements, conversations and events directly pertained nor checking or seeking to check or verify with the plaintiffs the accuracy and validity thereof. In further reckless disregard of its duty under the circumstances herein to investigate the truth or falsity of such statements, conversations and events, the defendant made no independent search for information even though such information was available to it.

41. The defendant FAWCETT knew that such aforesaid conversations, statements and events involving the plaintiffs independently and in relationship with their parents and others were fictitious, distorted and false and it printed, published, distributed and sold said book with reckless disregard for the truth or falsity of the aforesaid materials, contained therein.

Wherefore the plaintiffs, with respect to Count II, claim

AMENDED COMPLAINT IN CONNECTICUT ACTION AGAINST FAWCETT

One Million (\$1,000,000.00) Dollars compensatory damages
and One Million (\$1,000,000.00) Dollars punitive damages.

Dated at Stamford, Connecticut on the 19th day of March 1974.

Samuel Gruber
Samuel Gruber
218 Bedford Street
Stamford, Conn. 06901
Attorney for Plaintiffs

Please take notice that plaintiffs demand trial by
jury in this action.

Samuel Gruber
Samuel Gruber
218 Bedford Street
Stamford, Conn. 06901
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that service of the within Amendment
of Complaint and demand for jury trial was made by mailing a
true copy thereof, U.S. Mails, postage prepaid to Fawcett
Publications, Inc., Fawcett Building Fawcett Place, Greenwich,
Connecticut 06803.

AFFIDAVIT OF SAMUEL GRUBER IN OPPOSITION TO ORDER TO SHOW CAUSE.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

MICHAEL MEEROPOL and ROBERT MEEROPOL, :

Plaintiffs, :

- against - :

LOUIS NIZER and DOUBLEDAY & COMPANY,
INC., :

Defendants. :

73 Civ. 2720
(HRT)

AFFIDAVIT

STATE OF ^{NEW YORK} CONNECTICUT)
COUNTY OF ^{NEW YORK} FAIRFIELD) ss.:

SAMUEL GRUBER being duly sworn deposes and says:

1. I am the attorney for the plaintiffs in Meeropol, et al, vs. Fawcett Publications, Inc. Civil Action No. B747-73 in the United States District Court for the District of Connecticut. My office is at 218 Bedford Street, Stamford, Connecticut, 06901. Said action together with an order to show cause why a temporary injunction should not issue made returnable to March 29, 1974 in New Haven, Connecticut was filed in the District Court of Connecticut on March 6, 1974. A demand for a jury trial in the action was made on March 13, 1974, a copy thereof is attached as Exhibit A. On March 19, 1974 the plaintiffs amended their complaint, as of course, a copy of such amendment is attached as Exhibit B. No appearance for the defendant has been filed in said action to the date of this affidavit, nor has defendant moved in Connecticut to transfer said action to New York, nor has it moved in Connecticut for a stay therein.

AFFIDAVIT OF SAMUEL GRUBER IN OPPOSITION TO ORDER TO SHOW CAUSE

2. On Wednesday March 20, 1974 I received from Saterlee & Stephens by first class mail a copy of an Order entered in the above-captioned New York case by this Court on March 19, 1974, upon the application of Fawcett, directing the plaintiffs to show cause why an order staying all proceedings in the aforesaid Connecticut action should not be entered. Said Order was made returnable to March 22, 1974 for argument and provided that, pending arguments on the order to show cause, all proceedings in Connecticut were stayed. Service of said Order and the accompanying papers were further ordered to be made on me at my office in Stamford on or before March 19, 1974 at 5 P.M.

3. Since I have not entered my appearance for the plaintiffs in the New York action nor do I have authority from the plaintiffs to do so, I respectfully request permission to appear specially herein for the purpose only of filing this Affidavit and a Memorandum in opposition to Fawcett's application and to argue orally on the return day.

4. Attached to the order to show cause is Mr. Callagy's affidavit in which he describes his firm as "attorneys for the defendant Fawcett Publications, Inc. (Fawcett) in this litigation" (Callagy Aff. p.1). However, the affidavit further reveals that Fawcett is not a defendant in the New York litigation nor has it any party status therein. Nevertheless Fawcett now seeks to invoke the injunctive powers of this court to restrain the Connecticut action. On its face such invocation by Fawcett, a non-party to the New York action is patently improper. Fawcett simply has no standing to ask this court to exercise its extraordinary equitable powers.

AFFIDAVIT OF SAMUEL GRUBER IN OPPOSITION TO ORDER TO SHOW CAUSE

5. Not only is Fawcett not a party to the proceedings, in New York, but, according to the Callagy affidavit (p.4), it can suffer no damage by virtue of the Connecticut suit since it claims it has a full indemnification agreement from Doubleday. In this connection it should be observed that, on information I have received from Mr. Perlin, Doubleday in this action has declined to produce any agreements between it and any other publisher for a paperback edition of THE IMPLCSION CONSPIRACY. Hence, while plaintiffs at the time they became aware of the fact that Fawcett was about to publish such a paperback edition knew that such publication had to be made by virtue of some kind of agreement between Doubleday and Fawcett, they had no knowledge of the terms thereof, including the terms or the scope of an indemnification agreement, if any. The first time that plaintiffs knew that Doubleday was required to indemnify Fawcett and the conditions thereof was on March 19, 1974 after the Connecticut action was filed. On the papers submitted in this application for an order to show cause it does not appear that either of the named defendants agrees that the terms of said indemnification agreement does fully cover all the claims of the plaintiffs in the Connecticut action as asserted by Fawcett. The possibility of a conflict between Fawcett on the one hand and the named defendant is apparent.

But if, as Fawcett maintains the indemnification agreement

AFFIDAVIT OF SAMUEL GRUBER IN OPPOSITION TO ORDER TO SHOW CAUSE

does indeed cover all the plaintiffs claims in Connecticut then the situation is that a non-defendant who can suffer no damage nevertheless seeks equitable relief from this court. Fawcett's theory that although it cannot be damaged it is nevertheless entitled to an injunction against the plaintiffs might be labelled as a non-irreparable damage theory. Its mere assertion reveals its patent absurdity.

6. Contrary to the assertion in the Callagy affidavit (p.2) that the Connecticut action is virtually identical with that involved in this action, examination of the Connecticut complaint attached to Fawcett's application and the amended complaint attached hereto reveals that the thrust of the complaint in Connecticut is that Fawcett, unlike Doubleday and Nizer, had written notice for many months prior to publishing and selling the paperback edition of all of the plaintiffs' claims and therefore had a duty, higher even than that of the defendants herein, to look into and investigate the truth or falsity of the matters asserted by the plaintiffs. This applies for example, to the doctrine of fair use as enunciated by this Court in its decision denying the temporary injunction and as well to the claim for damages for unfair competition and the invasion of the plaintiffs' right to privacy. Since Fawcett has seen fit not to appear in Connecticut and hence has filed neither motions nor responsive pleadings, it would appear that the allegations of the complaint in Connecticut should, for purposes of the within application at least, be accepted as true.

AFFIDAVIT OF SAMUEL GRUBER IN OPPOSITION TO ORDER TO SHOW CAUSE

7. The Callagy affidavit asserts (p.3, para.6) that Fawcett is a Connecticut corporation. This is not so. It is, I was advised by the Connecticut Secretary of State's office a Delaware corporation authorized to do business in Connecticut. There is no denial in the affidavit that Fawcett has its principal place of business in Greenwich, Connecticut. Connecticut has therefore substantial contacts with the plaintiffs' cause of action and quite clearly there is minimal inconvenience for witnesses whether from New York or Greenwich. Certainly depositions of Fawcett witnesses which would be required in the Connecticut action would work no significant hardship on any of them.

8. The Callagy affidavit assertion (p.4) that one of the reasons for instituting an action in Connecticut was to "harrass defendants Nizer and Doubleday" is false. It is significant that neither Doubleday nor Nizer have filed affidavits herein to that effect. Certainly I am not aware of them if such affidavits were in fact filed. The affidavit with respect to Doubleday and Nizer further states "who plaintiffs know are required to indemnify Fawcett". The use of the present tense "know" is interesting. When they started the Connecticut action, as I have already indicated, the plaintiffs did not know of the indemnity agreement. The affidavit, by its use of the present tense only, agrees. Nevertheless the affidavit asserts that present knowledge acquired only on March 19, 1974 is one of the basis for claiming that the Connecticut suit filed prior thereto on March 6, 1974 was for the purpose of harrass-Nizer and Doubleday. The assertion is demonstrably untrue.

AFFIDAVIT OF SAMUEL GRUBER IN OPPOSITION TO ORDER TO SHOW CAUSE

9. As demonstrably incorrect is the claim that the plaintiffs brought their Connecticut action "to avoid the prior decision of this Court which refused to preliminarily enjoin any paperback edition of THE IMPLOSION CONSPIRACY;". Presumably the Court and Mr. Perlin know what happened during oral argument on the preliminary injunction in this case. I was not present. But a reading of the Court's decision quite clearly indicates that the oral request was to enjoin Doubleday and/or Nizer from any possible paperback publication and not Fawcett who has never been a party to this action. As the complaint in the Connecticut action shows clearly, the plaintiffs and Mr. Perlin became aware only in December, 1973, that Fawcett might publish a paperback edition of the book. Hence the notice letter to Fawcett (Complaint p. 8 & 9). The Court's decision is dated six months before the letter. To imply that the decision somehow was a ruling on whether Fawcett should be enjoined is palpably erroneous and to state that the reason for the plaintiffs' suit in Connecticut against Fawcett was to avoid the decision which in no way involved Fawcett is a fortiori erroneous.

10. As for the affidavit's assertion that plaintiffs brought the action in Connecticut to "seek in Connecticut a wider base of publicity for purposes of pursuing plaintiffs' true intent in this suit, i.e. to exonerate their parents" only shows the lengths to which Fawcett will go

AFFIDAVIT OF SAMUEL GRUBER IN OPPOSITION TO ORDER TO SHOW CAUSE

in seeking to stay the Connecticut suit.

Of course plaintiffs want to exonerate their parents. Such a motive instead of being back-handedly impugned by Fawcett should be welcomed by all as a sign of filial regard. How the action in Connecticut provides a wider base of publicity for pursuance of their laudable desires to exonerate their parents, Fawcett nowhere indicates except to present a long story from the New York Times which mentions the Connecticut suit only once and with a minimum of words. Fawcett's attempts to obfuscate the issues herein should be rejected.

11. The plaintiffs after apprising Fawcett fully of their claims which Fawcett nevertheless chose to ignore, started their suit in Connecticut, where Fawcett unquestionably is, to prevent it from publishing and distributing copied copyrighted material belonging to them, from unfairly competing with them with such material and for damages for flagrant invasion of their right to privacy and their right to be left alone.

By reason of all of the above I submit that this Court ought to reject the unwarranted invocation of its injunctive powers and deny the stay sought herein by Fawcett.

*Given to be read
this 22nd day of
March 1974*

Samuel Gruber

LETTER OF ROBERT M. CALLAGY DATED MARCH 20, 1974.

WILLIAM C. SCOTT
Counsel

JAMES F. DWYER
PAUL EDGAR SWARTZ
ROBERT H. SCHNELL
DONALD W. SMITH
FRANCIS D. KALOSKY
GEORGE C. SHIVELY
DAVID M. TAPPEN
ROBERT C. HUBBARD
HENRY J. FORMON, JR.
ROGER E. AN SHER
BRYAN WEBB
JAMES D. DANA
ROBERT M. CALLAGY
JOHN B. HORTON

SATTERLEE & STEPHENS
277 PARK AVENUE, NEW YORK, N. Y. 10017

TELEPHONE
(212) 826-6200

CABLE ADDRESS
"SATERFIELD" NEW YORK
TELEX 223437

WASHINGTON OFFICE
1701 PENNSYLVANIA AVENUE, N.W.
(ROOM 1100)
WASHINGTON, D. C. 20006
TELEPHONE (202) 298-6358

March 20, 1974.

BT

Hon. Harold R. Tyler, Jr.
Judge of the U. S. District Court
U. S. Court House
Foley Square
New York, N. Y.

Re: Meeropol v. Nizer, et al
73 Civ. 2720

Dear Judge Tyler:

Yesterday, shortly after noon, your Honor signed an order to show cause in the above action seeking to stay an identical action brought in the Connecticut District Court by the same plaintiffs against Fawcett Publications, Inc., the publisher of the paperback edition of THE IMPLOSION CONSPIRACY. My affidavit in support of the application specified that it was being made on behalf of the defendant Fawcett and the accompanying memorandum of law contained the same statement.

This letter is to request that the Court deem my moving affidavit and memorandum of law amended to show that the application is being made on behalf of the defendant, Doubleday & Company, Inc., joined by defendant Fawcett in the Connecticut action.

A copy of this letter is being sent to counsel for the plaintiffs in the New York and Connecticut actions.

Respectfully,

Robert M. Callagy

mat
cc: Samuel Gruber, Esq.
Marshall Perlin, Esq.

MOTION TO VACATE ORDER TO SHOW CAUSE AND STAY.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK


----- x

MICHAEL MEEROPOL and ROBERT MEEROPOL	:	
	:	
Plaintiffs,	:	73 Civ. 2720
	:	(HRT)
-against-	:	
	:	
LOUIS NIZER and DOUBLEDAY & COMPANY, INC.	:	
	:	
Defendants.	:	

----- x

Upon the affidavit of Marshall Perlin, sworn to the 22nd day of March 1974 and upon the proceedings hereto had the plaintiffs will move this Court at a motion term thereof to be held in the United States Courthouse, Foley Square, New York, on the 22nd day of March, 1974 at 12:00 noon or as soon thereafter as counsel can be heard for an order vacating and setting aside and declaring null and void ab initio the order to show cause dated March 19, 1974 and the stay contained therein and any hearings had thereon signed by the Hon. Harold R. Tyler, Jr., Judge of this Court.

Dated: New York, N. Y.
March 22, 1974


Marshall Perlin
Attorney for Plaintiffs
Michael Meeropol and
Robert Meeropol
36 West 44th Street
New York, N. Y.

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION.
 UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF NEW YORK

----- x
 MICHAEL MEEROPOL and ROBERT MEEROPOL, :

Plaintiffs, :

-against- :

73 Civ. 2720
 (HRT)

LOUIS NIZER and DOUBLEDAY & COMPANY, :
 INC., :

Defendants. :

AFFIDAVIT

----- x
 STATE OF NEW YORK)
) ss.:
 COUNTY OF NEW YORK)

MARSHALL PERLIN, being duly sworn, deposes and says:

1. I am the attorney for the plaintiffs herein and submit this affidavit in support of plaintiffs' motion to vacate and set aside the order to show cause and stay in this action granted by the Hon. Harold R. Tyler, Jr., Judge of this Court on March 19, 1974 and all proceedings had thereon in determining that the aforesaid order to show cause was and is null and void ab initio.

2. Since the service of the order to show cause was made on me immediately after its signing on March 19, 1974, I received a copy of a letter sometime in the morning of March 21, 1974, addressed to the Court and dated March 20, 1974 by Mr. Callagy attempting to retroactively, without any evidence of

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION
authority to "amend" the order to show cause and purporting to
change the party Mr. Callagy was representing at the time of his
submission of the order to show cause on March 19, 1974. While a
copy of the letter indicates a copy of same is also sent to
Samuel Gruber, Esq., he had not at least by 5:30 p.m. on March 20,
1974 received the same.

3. I had advised Mr. Callagy while he was submitting
the order to show cause to this Court during a brief recess of
the trial in another matter that the order to show cause was
improperly brought in behalf of an entity not party to the pro-
ceedings in this Court who had no standing to seek or obtain the
relief requested and that the party was in the wrong forum. While
I stated this in the presence of the court, undoubtedly in view
of the very brief recess this Court did not have an opportunity
to consider the matter. Undoubtedly, Mr. Callagy has had some
second thoughts about his fatally defective application and retro-
actively and most irregularly sought to no avail to alter the
order to show cause after it had been acted upon by this Court.

4. In light of the above, the plaintiffs have moved
to strike the entire order to show cause and submits this affidavit
in respect thereto. Since the only order to show cause before
this Court is the one that was submitted to it and signed by it
on March 19, 1974 in behalf of Fawcett Publications, not a party

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION to this proceeding by an attorney who has not noticed his appearance in its behalf in this or any other action, it is respectfully submitted that the "merits of the application: is not before this Court. Nor does the attempted amendment have any meaning or posit the issues before the Court. The "merits" of the affidavit by its express terms is written in behalf of Fawcett and not Doubleday. Obviously Mr. Callagy did not purport then or now to submit the affidavit as an application of defendant Nizer.

5. Nizer, Fawcett and Doubleday are not interchangeable parties, they are not "all one happy family". Each of the parties have separate interests, liabilities and accountabilities for damages and their respective contractual rights inter se very quite considerably both as to actual and potential liabilities and culpability because of their independent wrongful conduct. This would reflect to some extent but by no means all, the divergence of interests between the parties. There would be a clear conflict of interests were Doubleday and Fawcett represented by the same counsel in light of the above. These conflicting interests and liabilities in light of the facts and legal implications may well be one of the considerations that compel Mr. Callagy to "rearrange" or "amend" the order to show cause.

6. An examination of the history of the two proceedings as they relate to defendant Nizer and defendant Doubleday and

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION

Fawcett are relevant in consideration of the plaintiffs' application to vacate the order to show cause:

a. On April 27, 1973 Fawcett and Doubleday entered into a contract for the publication of a paperback edition of THE IMPLOSION CONSPIRACY (See Exhibit attached to the Fawcett order to show cause). This contract was never seen by plaintiffs until the service of the order to show cause on March 19, 1974. Parenthetically it should be noted that the plaintiffs demanded the production of all contracts relating to publication or sale of the book but defendants Nizer and Doubleday refused to produce them, although the request to produce was served on October 19, 1973.

b. On May 10, 1973 letters were delivered by plaintiff to defendants Nizer and Doubleday demanding they cease and desist from engaging in their tortious acts and that certain steps be taken to rectify the wrong done.

c. On June 19, 1973 this action was commenced with due and proper service upon defendants Doubleday and Nizer in this Court.

d. On December 7, 1973 the plaintiffs hearing that Fawcett was going to publish a paperback edition of the book THE IMPLOSION CONSPIRACY wrote a letter by certified mail - return receipt requested demanding that Fawcett cease and desist

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION

from the printing, publishing or distribution of the book holding them fully accountable, advising them that they were repeating and expanding the wrongs already done by the defendants in this action for which Fawcett would be fully accountable. Along with the letter Fawcett received a copy of the letter written to Doubleday on May 10, 1973 which was attached to the complaint in this action along with a copy of the complaint itself, thus putting Fawcett fully on notice not only with respect to the copyright claim as set forth in the ~~second~~ ^{first} count along with the plaintiffs' second and third count of the complaint. It was requested that Fawcett respond and plaintiffs indicated their willingness to answer any question that Fawcett might have. Fawcett never replied.

e. While appearing before this Court on a motion directed to answers to the interrogatories on December 28, 1973, after the conclusion of the matter Mr. Callagy complained to this Court that I had been "harassing" Fawcett by writing my letter of December 7, 1973 (See Paragraph 21 of the Connecticut Complaint). Inter alia it was noted by this Court that Fawcett was not a party to the proceeding.

f. On March 6, 1974 an action was instituted in the United States District Court for the District of Connecticut, an action by the plaintiffs, Meeropol against Fawcett. An amended complaint was thereafter served upon Fawcett in the Connecticut action.

6. It is clear from the above that in spite of full notice by the plaintiffs to Fawcett in December of 1973, assuming

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION

Fawcett had no notice of the action prior thereto, Fawcett chose to ignore the entire situation, it knew it was vulnerable to action instituted by the plaintiffs herein. What arrangements were made between Fawcett, Doubleday and Nizer in the interim is unknown to plaintiffs. Rather it would seem Fawcett felt it was free to proceed with publishing 800,000 copies of the paperback as a first printing and seek to reap profits at the most rapid pace. Fawcett at any time could have moved to intervene in the action in this Court. It chose to sit back and wait. It is clear that Fawcett's equitable position is entirely untenable and it is in no posture to be asking the aid of a court in a proceeding where it is not a party and where it never attempted to become a party.

7. While the action has been pending in Connecticut for 15 days no attorney has appeared in its behalf in that proceeding. Fawcett would have standing to make a motion in the District Court in Connecticut to transfer the action and consolidate it with the action pending in this Court. It has not done so. Fawcett, as a party in the Connecticut action could have moved for a stay in that court. It chose not to do so. Fawcett could have moved for leave to intervene in this Court. It has chosen not to do so.

8. Equally Doubleday could have moved for leave to intervene in the Connecticut action and chose not to do so.

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION

Were one to accept, which we do not do, the contention of Mr. Callagy (in whose behalf he makes this contention we do not know) that the only party who will have to pay any liabilities that accrue in either action would be Nizer, Surely Nizer could have intervened in the Connecticut action but he chose not to do so.

9. On Wednesday or Thursday, March 13th or March 14th, I received a phone call from Mr. Rittinger of Satterlee and Stevens who advised he was calling in Mr. Callagy's absence since the latter was in Europe for the week to discuss the question of transfer of the Connecticut action from Connecticut to New York and also mentioned as an alternative the possible use of jointly handling the two actions in light of devices afforded in cases of multi district litigation (assumedly 28 U.S.C. Section 1407). I advised him to communicate with Mr. Gruber and thereafter I would discuss the matter after I had completed and submitted my memorandum relating to the motion for summary judgment pending in this action. Mr. Rittinger expressed chagrin that I couldn't give him an immediate response even though I indicated that there would be no prejudice to any of the parties if the question were put over to discuss the following week. Indeed I advised Mr. Callagy upon his return from Europe when I spoke to him on Monday, March 18th when he too demanded an immediate response regarding transfer and consolidation, that I planned to meet with Mr. Gruber

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION
in the evening of March 19th since I would be tied up before
that in taking a deposition of defendant Nizer. For reasons
that I have yet to fathom, he advised me that he could not
tolerate such a protracted delay even though I said I would
be back to him on Wednesday, March 20th. The next I heard
from Mr. Callagy was on the morning of March 19th when he
told me that my presence in court at noon that day was required
by Judge Tyler. He would make his order to show cause available
to me while we were awaiting the recess only minutes before
they were submitted to the Court.

10. A cursory examination of the order to show cause
and supporting papers before it was presented to this Court
made it evident that the applicant in whose behalf Mr. Callagy
was acting, at least on the morning of March 19th - it would
seem to change from day to day - had no standing in this Court
to ask for any relief or for an order to show cause and I so
stated at the time of its submission.

11. I must seriously question what authority, if
any, Mr. Callagy had to act and make representations as he
did in his affidavit in support of the order to show cause
from Fawcett. He was unaware of the fact that Fawcett was
a Delaware, not a Connecticut corporation. Had he checked
with Fawcett, he could have learned that fact. He seemed to
be unaware that there was a demand for a jury trial as early

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION

as March 13th in the Connecticut action and he certainly did not attach the demand to his papers. He purports to make representations to the effect that the sole party undoubtedly liable on any of the counts in any of the actions is defendant Nizer who most assuredly has not acknowledged or confirmed that fact. At best he overlooked the pertinent fact that the indemnification provision in the contract between Nizer and Doubleday were substantially different from that of Doubleday and Fawcett. Hence his representation of privity with respect to the indemnification provisions and that each of the parties stand in the same posture in both actions on all counts is patently an error.

12. Equally the statement that the issues are identical in both actions for Nizer, Doubleday and Fawcett does not accord with the facts (See the affidavit of Samuel Gruber). In light of the above the ambiguity in Mr. Callagy's affidavit as to what Fawcett has advised him and what it is prepared to do and what allegedly defendants Nizer and Doubleday are prepared to do becomes well-nigh meaningless in the context of the second paragraph of his letter of March 20, 1974 as he loosely moves the parties around in the order to show cause and suggests that his amendment is joined in "by defendant Fawcett in the Connecticut action".

13. This cavalier disregard of the federal rules of civil procedure and toying with the processes of the court only compounds the wrong and such techniques cannot be sanctioned by the court nor used as a trick or ruse to the prejudice of the plaintiffs.

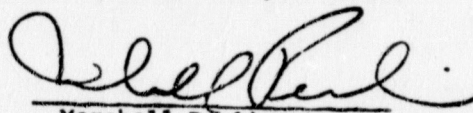
AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION

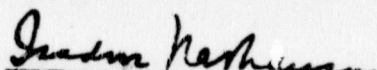
14. The rationale of Mr. Callagy's action is denied by each and every case cited by him in his memorandum - the parties seeking relief must have standing in the court in which it applies for such relief. That is why, of course, Mr. Callagy belatedly sought to obscure his error through his letter of March 20, 1974. In his memorandum Mr. Callagy states "for all practical purposes" each of the parties, Nizer, Doubleday and Fawcett are the same. I doubt whether his clients whoever that may be or the others sanction that statement or are willing to abide by that commitment.

15. Is Mr. Callagy suggesting that if the plaintiffs prevail in this action without Fawcett being a party, Fawcett becomes liable on the doctrine of collateral estoppel or res judicata?

For all these reasons, it is respectfully prayed that the plaintiffs' motion to vacate and set aside and declare null and void the order to show cause dated March 19, 1974 and the stay contained therein be granted, said application being joined by Samuel Gruber, Esq. If a party having standing in this action wishes to make any application it can do so and at that time the merits of its ~~contentions~~ will be dealt with by the plaintiffs herein.

Sworn to before me
this 22nd day of March, 1974.


Marshall Perlin


Notary Public

ISADORE NATHANSON
Notary Public, State of New York
No. 24-23511-10
Qualified in Kings County
Commission Expires March 30, 1975

PLAINTIFFS' MOTION TO ADJOURN SETTLEMENT OF ORDER
AND OTHER RELIEF.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

MICHAEL MEEROPOL and ROBERT MEEROPOL,

Plaintiffs,

73 Civ. 2720 (HRT)

-against-

LOUIS WIZER and DOUBLEDAY & COMPANY,
INC.,

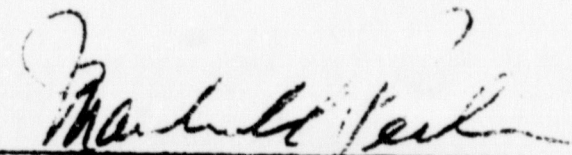
NOTICE OF MOTION

Defendants.

----- X

Upon the annexed affidavit of MARSHALL PERLIN, ESQ., sworn to the 1st day of April, 1974, and upon the proceedings heretofore had, the plaintiffs move this Court for an order adjourning the settlement of an order on the order to show cause returned on March 22, 1974, to April 5, 1974 at 2:15 P.M. at a Motion Term of this Court at the Courthouse, and in the alternative in the event the proposed order is signed, that it be stayed pending the determination of the plaintiffs' appeal from said order to the United States Court of Appeals for the Second Circuit.

Dated New York, New York
April 1, 1974.



MARSHALL PERLIN, ESQ.
Attorney for Plaintiffs
36 West 44th Street
New York, New York 10036

PLAINTIFFS' MOTION TO ADJOURN SETTLEMENT OF ORDER
AND OTHER RELIEF

TO:

SATTERLEE & STEPHENS, ESQS.
Attorneys for Defendant DOUBLEDAY & COMPANY,
INC. and for FAWCETT PUBLICATIONS, INC.
277 Park Avenue
New York, New York 10017

PHILLIPS, NIZER, BENJAMIN, KREIM
& HALLON, ESQS.
Attorneys for Defendant NIZER
40 West 57th Street
New York, New York

SAMUEL GRUBER, ESQ.
Attorney for Plaintiffs in Connecticut
Action
218 Bedford Street
Stamford, Connecticut 06901

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION TO
ADJOURN SETTLEMENT OF ORDER AND IN OPPOSITION TO
PLAINTIFFS' MOTION TO DEFER SETTLEMENT OF ORDER.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- X

MICHAEL MEEROPOL and ROBERT MEEROPOL,

Plaintiffs,

-against-

LOUIS NIZER and DOUBLEDAY & COMPANY, INC.,

Defendants.

----- X

73 Civ. 2720 (HRT)

AFFIDAVIT IN SUPPORT
OF MOTION AND IN
OPPOSITION TO PROPOSED
ORDER

STATE OF NEW YORK)
) ss. :
COUNTY OF NEW YORK)

MARSHALL PERLIN, being duly sworn, deposes and
says:

1. I am the attorney for the plaintiffs in this
action and submit this affidavit for the following purposes:

a) in opposition to the proposed order submitted
by defendant Doubleday;

b) deferring the settlement and signing of the
proposed order until the hearing and determination of the
motion of Fawcett Publications, Inc. (Fawcett) now return-
able on April 5, 1974, for leave to intervene under certain
conditions;

c) in any event staying the order of this Court,
pending the plaintiffs' appeal from said order to the United
States Court of Appeals for the Second Circuit from said
order and the determination of that appeal.

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION TO
ADJOURN SETTLEMENT OF ORDER AND IN OPPOSITION TO
PLAINTIFFS' MOTION TO DEFER SETTLEMENT OF ORDER

2. The proposed order declares that it is based upon an order to show cause by defendant Doubleday "joined by Fawcett Publications, Inc." The order to show cause dated March 19, 1974 was brought by, in the name of and in behalf of Fawcett only, based upon an affidavit of Mr. Callagy in behalf of Fawcett only, with no papers ever thereafter submitted in behalf of defendants Doubleday or Nizer. Similarly, neither of the defendants attested or agreed to any of the fact claims in the Fawcett affidavit. It is stated in the proposed order that Fawcett "joined" in the order to show cause. Fawcett had and has no standing in this Court to ask or join in asking for the relief sought in the order to show cause. Hence the reference to Fawcett in the proposed order should be as the moving party or not at all. It is submitted that the proposed order only reflects what is set forth in the moving papers, and nothing else. The only relief requested was the stay of the Connecticut action and nothing more. Fawcett in its affidavit guardedly and conditionally offers to appear in this action, if and when it is named party defendant in a supplementary complaint which it suggests plaintiffs might frame and file and attempt to serve.

3. The letter of March 20, 1974 referred to in the proposed order was not received by Samuel Gruber, Esq. until March 23, 1974, and received by me on March 21, 1974.

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION TO
ADJOURN SETTLEMENT OF ORDER AND IN OPPOSITION TO
PLAINTIFFS' MOTION TO DEFER SETTLEMENT OF ORDER

4. In the first paragraph of the proposed order it is stated that the plaintiffs instituted an action in the United States District Court in Connecticut on March 11, 1974. In fact the action was instituted on March 6, 1974 when it was filed in the United States District Court for Connecticut in New Haven and it was on that day that the Hon. Jon A. Newman signed an order to show cause why a temporary injunction should not be issued against Fawcett and setting down the hearing thereon for March 29, 1974.

5. The order to show cause herein was brought hastily and in flagrant disregard of the rules and law because Fawcett wished to avoid a hearing on the temporary injunction in the District Court of Connecticut -- not because of an alleged fear of a duplicitous trial, or by a desire for judicial economy or that justice be served. They wished rather to exploit profitably the sale of 800,000 and more copies of a paperback book for which they had obliged themselves to pay no less than \$335,000.

6. I have been advised that after the hearing before this Court, that some time on the afternoon of March 22, 1974, this Court, through its law secretary, communicated with Mr. Callagy and read to him a portion of a draft of the opinion of this Court and advised Mr. Callagy he could tell the District Court in Connecticut and plaintiffs' attorneys as

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION TO
ADJOURN SETTLEMENT OF ORDER AND IN OPPOSITION TO
PLAINTIFFS' MOTION TO DEFER SETTLEMENT OF ORDER

well that this Court would subsequently enter an order staying the plaintiffs from proceeding in the Connecticut action. Mr. Callagy did not so advise plaintiffs' attorneys. Instead he wrote a letter dated March 25, 1974 to the Hon. Jon O. Newman, Judge of the District Court, stating the following:

"On March 22, 1974 at approximately 12:45 P.M., Judge Harold R. Tyler, Jr. permanently stayed the plaintiffs from proceeding in the above action in response to an application by defendant Doubleday & Company, Inc., in Meeropol v. Louis Wiser and Doubleday & Company, Inc. 73 Civ. 2720 (NRT) (U.S. Southern District Court) in which the defendant Fawcett in the above action joined."

A copy of this letter was sent to the clerk of the district court in Connecticut. No copy was sent to Mr. Gruber or myself. After having learned of the letter from the district court in Connecticut, I thereafter requested and received a copy from Mr. Callagy late in the afternoon of March 27th.

7. In view of the hearing scheduled for March 29, 1974, Mr. Gruber and I on March 26, 1974 advised Judge Newman of what had transpired at the hearing in this Court. Judge Newman thereafter adjourned the return day of the motion for a temporary injunction to April 3, 1974 and requested Mr. Callagy to submit to the attorneys for the plaintiffs a copy of the proposed order in this action as soon as possible.

8. On page 1 of the proposed order it should be noted that the order to show cause and affidavit was not

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION TO
ADJOURN SETTLEMENT OF ORDER AND IN OPPOSITION TO
PLAINTIFFS' MOTION TO DEFER SETTLEMENT OF ORDER
served upon Mr. Gruber on March 19, 1974, but was received
by him only on March 20, 1974 and the letter of March 20,
1974 was not received by Mr. Gruber until March 23, 1974
and received by me in the mail on March 21, 1974.

9. The proposed order does not set forth the
motion of the plaintiffs fully or correctly. The plaintiffs
moved to vacate, set aside and declare null and void ab
initio the order to show cause of March 19, 1974, as well as
the stay contained therein, said motion being dated March 22,
1974 and based upon the affidavit of Marshall Perlin, sworn
to March 22, 1974 (see also bottom of page 2 of proposed
order). No service was made upon any attorney for any
defendant in the Connecticut action since no attorney has
appeared for Fawcett or anyone else in the Connecticut action.

10. On March 21, 1974, after having that day re-
ceived the Callagy letter of March 20, 1974, I concluded
that because of the jurisdictional and procedural questions
and the confusion created by the attempt to reframe the order
and the party seeking relief, such issues would have to be
resolved before the merits, if properly raised by a party
having standing, could be reached. Hence it was to the
important jurisdictional and procedural questions only that
plaintiffs' papers were addressed. In this light the cross
motion was made. Until the return of the order on March 22,

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION TO
ADJOURN SETTLEMENT OF ORDER AND IN OPPOSITION TO
PLAINTIFFS' MOTION TO DEFER SETTLEMENT OF ORDER

1974, I did not know that this Court would deem the questions posed a technical formality and summarily resolve the fact claims without a hearing.

11. The above has pertinence with respect to certain of the statements contained on page 2 of the proposed order which set forth Fawcett's and Doubleday's fact claims as findings of facts on which there has been no hearing and which are sharply disputed by plaintiffs. The action instituted in Connecticut is not the same as the action instituted in this Court. It is not merely the difference in parties but it is based upon new and additional facts and events relating to Fawcett and which arose after the institution of the New York action. Equally, plaintiffs deny that Doubleday has indemnified Fawcett for all claims arising out of Fawcett's publication of **THE IMPLOSION CONSPIRACY**, and plaintiffs can establish that fact as well as the fact that contrary to the Callagy affidavit, the indemnification agreement between Nixer and Doubleday is qualitatively different than that of Doubleday and Fawcett, and the latter does not cover and include certain claims set forth in the Connecticut action, and that the parties are not in privity.

12. The proposed order is based on Mr. Callagy having heard only portions of a draft of an opinion by this Court. I stand in the same posture. Nevertheless, it was

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION TO
ADJOURN SETTLEMENT OF ORDER AND IN OPPOSITION TO
PLAINTIFFS' MOTION TO DEFER SETTLEMENT OF ORDER

my impression at the time of argument that this Court would condition the granting of the order to show cause upon receipt of an affidavit both from Fawcett and its attorney that it is intervening in this action now and not on a possible future contingency, although its right to intervene was challenged by plaintiffs. It now seems that Fawcett seeks to avoid intervening now in this action as it stands.

13. Rather in the proposed order it is stated (p.2) that "Fawcett is doing business in New York and... has agreed to intervene in this action and accept service of a supplemental summons and complaint which names Fawcett as a defendant by reason of its publication of the paperback." Thus the position of Fawcett is that it is not intervening now but will intervene in the event of a subsequent supplemental summons and complaint by plaintiffs naming it as a defendant, and then it will do so "as soon as reasonably practicable", otherwise not. In any event, it asks this Court to stay the Connecticut action. The proposed order thus does not reflect what was said to be a condition precedent by this Court for the granting of a stay -- intervention now.

14. If Fawcett cannot intervene in this action now without a supplemental complaint based upon facts occurring after the institution of this action, involving and naming Fawcett, it only serves to make clear that: (1) the

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION TO
ADJOURN SETTLEMENT OF ORDER AND IN OPPOSITION TO
PLAINTIFFS' MOTION TO DEFER SETTLEMENT OF ORDER

parties in the two actions are not the same, the two actions substantially differ in respect to facts, the times of occurrence and their legal implications, and the claims between Nixer, Doubleday and Fawcett inter se raise conflicts of interest; (2) the stay requested cannot become operative without Fawcett's intervention in this action.

15. The inherent confusion reflected in the proposed order and its operative provisions is reflected in a motion made by Fawcett dated March 28, 1974 and received by me on March 29, 1974, returnable April 5, 1974, wherein it seeks an order "for leave to intervene as a defendant in this action and to permit plaintiffs to move for relief to serve a supplemental complaint naming Fawcett Publications Inc. as a defendant ... if they should so desire." Thus Fawcett is not intervening in this action now and will not intervene, even in the event this proposed order is signed, but rather wishes to reserve to itself the right to intervene in the event plaintiffs desire and do file a supplemental complaint naming it as one of the parties defendant.

16. It is apparent that Fawcett in its current motion to intervene, submitted by the attorneys for defendant Doubleday confronts this Court with all of the same issues and new issues in a different setting that were inherent in the initial order to show cause of March 19,

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION TO
ADJOURN SETTLEMENT OF ORDER AND IN OPPOSITION TO
PLAINTIFFS' MOTION TO DEFER SETTLEMENT OF ORDER

1974 and that were never really disposed of.

17. In light of the above it is requested that this Court defer the settlement of the proposed order to the time of the return of the current motion to intervene, at which time all of the issues will be before this Court and at which time the opinion of this Court will be available to all of the parties.

18. The operative provision of the proposed order reflects the entire confusion of the proceedings as they now stand. The Connecticut action should not be stayed in any event until and unless Fawcett intervenes in this action as it now stands, reserving to the plaintiffs the right to object to improper intervention. The operative portion of the proposed order as submitted by the defendant Doubleday would permit the staying of the Connecticut action whether or not Fawcett intervenes at some undefined time in the future in the event that plaintiffs file a supplemental complaint.

19. There never was a need for an interim stay in the Connecticut action at the time of the submission of the order to show cause, nor is there any need for a stay now. Doubleday has completed the sale of its hardcover editions, which by its affidavit previously submitted was

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION TO
ADJOURN SETTLEMENT OF ORDER AND IN OPPOSITION TO
PLAINTIFFS' MOTION TO DEFER SETTLEMENT OF ORDER
less than 100,000 copies. It is Fawcett who is now

publishing and distributing upwards of 300,000 copies of
the book in paperback, which is causing irreparable injury
to the plaintiffs and the plaintiffs are entitled to their
day in the Federal District Court in Connecticut in support
of their application for a temporary injunction. Fawcett
will have its opportunity to oppose the application in that
Court. There is no equitable grounds for staying the con-
sideration of that application that has been shown by
Fawcett or any of the defendants herein.

20. In the event the proposed order is signed,
the plaintiffs respectfully request that this Court stay
its order pending the plaintiffs' filing of their Notice of
Appeal and applying for further relief before the United
States Court of Appeals for the Second Circuit. There are
substantial questions to be considered by the Appellate
Court, including inter alia, whether this Court had juris-
diction to issue the order; whether the order to show cause
was fatally defective ab initio; whether the causes of
action in the two district courts were identical; whether
the parties in the two actions are in fact identical;
whether Fawcett has been indemnified by Doubleday under the
complaint in the action instituted in Connecticut as
amended; and whether or not there are any reasonable grounds

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION TO
ADJOURN SETTLEMENT OF ORDER AND IN OPPOSITION TO
PLAINTIFFS' MOTION TO DEFER SETTLEMENT OF ORDER

for staying consideration of the motion for a temporary
injunction in the United States District Court for Connecticut, now returnable on April 3, 1974.

21. The impropriety of the entire procedure, commencing with the framing of the order to show cause, lay in Fawcett's and Doubleday's attempt to conceive of a device to avoid the Connecticut district court by asking this Court to act beyond its powers and in effect transfer the Connecticut action to this Court, and at the same time evade the motion for a temporary injunction in the Federal Court in Connecticut and vitiate plaintiffs' demand for a jury trial in the action instituted in Connecticut. Thus Fawcett and Doubleday devised their scheme to avoid the clear mandate of the rules of procedures and the judicial code (Rule 42 FRCP and 28 U.S.C. Section 1404) and not appear before the Connecticut district court to ask for a transfer or stay or any relief.

22. Fawcett and Doubleday can move for a transfer of the Connecticut action to the Southern District of New York, but such a motion would have to be made in Connecticut. It would be beyond the power of either the district court here or in Connecticut to consolidate these actions while they were pending in two different district courts. Only in the event of a transfer of one of the actions to either

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION TO
ADJOURN SETTLEMENT OF ORDER AND IN OPPOSITION TO
PLAINTIFFS' MOTION TO DEFER SETTLEMENT OF ORDER
the District of Connecticut or the Southern District of
New York could a motion to consolidate be made by any of
the parties. In determining whether the actions should be
in Connecticut or New York one would then consider as a
factor that the current active tort feisor is Fawcett, the
defendant in the Connecticut district court action, in the
district of its principal place of business. Upon the
determination of the transfer motion and any motion to consoli-
date would the issue of intervention, if any, of Fawcett or
any other defendant, arise.

23. Similarly any motion for a stay of the Connec-
ticut action should, in the first instance, be brought in
Connecticut. That is where it belongs -- not in this Court.
In short, the proper forum for all of the applications of
Fawcett and/or Doubleday should have been brought in the
district court of Connecticut, and not this Court. To avoid
this Fawcett, not a party in this action, improperly brought
on the order to show cause. Mr. Callagy belatedly and inef-
fectually tries to correct the error by substituting Double-
day and now proposes that Fawcett intervene only after and
if the Connecticut action is reinstituted in this Court --
thus playing havoc with the rules -- but at all costs avoid-
ing jurisdiction or appearance before the Federal district
court in Connecticut.

24. The culmination of the improprieties of Fawcett

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION TO
ADJOURN SETTLEMENT OF ORDER AND IN OPPOSITION TO
PLAINTIFFS' MOTION TO DEFER SETTLEMENT OF ORDER

and Doubleday's actions are reflected in their motion to conditionally offer to intervene in this action in the event this Court grants leave to plaintiffs, leave Fawcett and Doubleday ask for, to file a supplementary complaint, if plaintiffs so desire. They seek by these means to effect for all practical purposes the dismissal of the Connecticut action with all the rights that have there vested with plaintiffs and to frustrate and preclude the pending application for a temporary injunction thus compelling plaintiffs to file a new complaint de novo in this suit in this district.

25. We are not here dealing with "mere technicalities, rules or formalities". We are dealing with substantial rights of the plaintiffs and basic questions going to the jurisdiction of this Court and the Connecticut court under the applicable rules and statutes. The grossly improper circumvention of the law and the decisions of the court of this circuit by the means attempted by Fawcett and Doubleday should not be countenanced by this Court nor should Fawcett and Doubleday be permitted to play that game.

WHEREFORE, it is respectfully prayed that the proposed order not be entered; that the matter be adjourned to April 5, 1974 at 2:15 P.M. and in the alternative, in the event the order is signed, that it should be stayed pending

AFFIDAVIT OF MARSHALL PERLIN IN SUPPORT OF MOTION TO
ADJOURN SETTLEMENT OF ORDER AND IN OPPOSITION TO
PLAINTIFFS' MOTION TO DEFER SETTLEMENT OF ORDER

the determination of the plaintiffs' appeal from the order
to the United States Court of Appeals, Second Circuit.

Marshall Perlin

Sworn to before me this

1st day of April, 1974.

AFFIDAVIT OF ROBERT M. CALLAGY IN OPPOSITION TO
PLAINTIFFS' MOTION TO DEFER SETTLEMENT OF ORDER.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x

MICHAEL MEEROPOL and ROBERT MEEROPOL

73 Civ. 2720 (HRT)

Plaintiffs,

-against-

LOUIS NIZER and DOUBLEDAY & COMPANY, INC.

AFFIDAVIT IN OPPOSITION
TO PLAINTIFFS' MOTION
TO DEFER SETTLEMENT
OF ORDER

Defendants.

-----x

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ROBERT M. CALLAGY, being duly sworn deposes and
says:

1. I make this affidavit in reply to the affidavit
of plaintiffs' attorney sworn to April 1, 1974, which has been
submitted in support of a motion to defer settlement of the Order
permanently staying the action which plaintiffs' instituted
against Fawcett Publications, Inc. ("Fawcett"), on March 11, 1974,
in the United States District Court of Connecticut (the
"Connecticut" action).

2. On March 22, 1974, this Court granted the motion
of defendant Doubleday joined in by defendant Fawcett and
permanently enjoined plaintiffs from prosecuting the Connecticut
action until a final determination of this action. The Court's
decision granting such motion was conditioned upon the filing by
Fawcett of an affidavit stating (1) that the claims asserted

AFFIDAVIT OF ROBERT M. CALLAGY IN OPPOSITION TO
PLAINTIFFS' MOTION TO DEFER SETTLEMENT OF ORDER

in the Connecticut action were subject to indemnification by defendant Doubleday and (2) that Fawcett, which was doing business in New York, would agree to appear as a party defendant in this action and move to intervene as such within a reasonable time.

3. Representations of the above facts by Fawcett are contained in the affidavit of Fawcett's Vice President - Leona Nevler sworn to March 27, 1974, submitted in support of Fawcett's motion to intervene in this action as a party defendant, a copy of which was served upon plaintiffs' attorney on March 28, 1974. In spite of statements in the affidavit of plaintiffs' attorney to the contrary, Fawcett's motion to intervene is not in any way conditional. Fawcett's motion which is returnable before this Court on April 5, 1974, requests simply that it be permitted to intervene as a party defendant and upon such intervention it agrees to accept service of a supplemental complaint naming it as a defendant by reason of its publication of the paperback edition of THE IMPLOSION CONSPIRACY. The relief requested by Fawcett has been consented to by defendants Doubleday and Nizer, in separate affidavits filed by their attorneys.

4. On March 26, 1974, I received a telephone call from Judge Newman of the United States District Court for Connecticut who advised me that the plaintiffs' attorneys had communicated with him and stated that the Connecticut action had not been stayed because an Order to that effect had not been entered in this action. In response to the request by plaintiffs'

5. In view of the fact that Fawcett's unconditional motion to intervene as a party defendant is returnable on April 5, 1974, and defendants Doubleday and Nizer have consented to such intervention, Fawcett has complied with the conditions set by the Court at the time it granted the motion staying the Connecticut action.

Robert M. Callagy

Mary C. Laurentino
Notary Public

MARY A. TAFANTINO
No. 100-87614 New York
Ex. 90-19-10
Qualified in all County
Certificate no. 100-87614 New York County
Commission expires March 30, 1975

NOTICE OF MOTION BY FAWCETT TO INTERVENE AS PARTY DEFENDANT.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x
MICHAEL MEEROPOL and ROBERT MEEROPOL, :
Plaintiffs, : 73 Civ. 2720
 : (HRT)
-against- :
LOUIS NIZER and DOUBLEDAY & COMPANY, : NOTICE OF MOTION
INC., : TO INTERVENE AS A
Defendants. : PARTY DEFENDANT
-----x

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of Leona Nevler, sworn to March 27, 1974, and the order of this Court permanently staying an action entitled Michael Meeropol, a/k/a Michael Allen Rosenberg and Robert Meeropol, a/k/a Robert Harry Rosenberg v. Fawcett Publications, Inc., bearing File No. B-74-73 Civ. (JAN), which was instituted on March 11, 1974 in the U.S. District Court of Connecticut, the undersigned will move this Court on the 5th day of April, 1974, at 2:15 o'clock in the afternoon, or as soon thereafter as counsel can be heard, in Room 2804, U.S. Court House, Foley Square, New York, New York, for leave to intervene as a defendant in this action and to permit plaintiffs to move for leave to serve a supplemental complaint naming Fawcett Publications, Inc. as a defendant by reason of its publication of the paperback edition of THE IMPLOSION CONSPIRACY, if they should so desire, and for such other and further relief as to the Court may seem just and proper.

Dated: New York, N. Y.
March 28, 1974.

Yours, etc.,

SATTERLEE & STEPHENS
Attorneys for FAWCETT PUBLICATIONS, INC.
Office & P. O. Address
277 Park Avenue
New York, N. Y. 10017
(212) 826-6200

NOTICE OF MOTION BY FAWCETT TO INTERVENE AS PARTY DEFENDANT

TO: MARSHALL PERLIN, Esq.
Attorney for Plaintiffs
36 West 44th Street
New York, N. Y. 10036

MESSRS. PHILLIPS NIZER BENJAMIN
KRIM & BALLON
Attorneys for Defendant, LOUIS NIZER
40 West 57th Street
New York, New York 10019

AFFIDAVIT OF GEORGE BERGER IN SUPPORT OF MOTION TO INTERVENE.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

- - - - -x

MICHAEL MEEROPOL and ROBERT MEEROPOL, :

Plaintiffs, : 73 Civ. 2720
(HRT)

-against- :

LOUIS NIZER and DOUBLEDAY & COMPANY, : AFFIDAVIT
INC., :

Defendants. :

- - - - -x

STATE OF CONNECTICUT)
) ss.:
COUNTY OF FAIRFIELD)

LEONA NEVLER, being duly sworn, deposes and says:

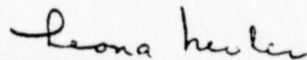
1. I am a Vice President of Fawcett World Library, a Division of Fawcett, Inc. (Fawcett), which was named as a defendant in an action entitled Michael Meeropol, a/k/a Michael Allen Rosenberg and Robert Meeropol, a/k/a Robert Harry Rosenberg v. Fawcett Publications, Inc., File No. B-74-73 Civ. (JAN), which was instituted on March 11, 1974 in the U.S. District Court for Connecticut (Connecticut action).

2. I have been advised that a temporary stay of the Connecticut action was issued by District Judge Tyler in the above action at 12:40 P.M. on March 19, 1974, and that a permanent stay of said Connecticut action was issued on March 22, 1974 at approximately 1:15 P.M.

3. I make this affidavit to advise the Court that

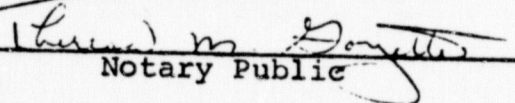
AFFIDAVIT OF GEORGE BERGER IN SUPPORT OF MOTION TO INTERVENE

Fawcett is qualified to do business in New York and maintains an office at 1515 Broadway, New York City. Inasmuch as Fawcett has been indemnified by the defendant, Doubleday & Company, Inc. (Doubleday), under the terms of an agreement dated April 27, 1973 wherein the paperback rights to THE IMPLOSION CONSPIRACY were licensed to it, Fawcett will look to Doubleday to provide the primary defense in this litigation. For this purpose, Fawcett authorizes the firm of Satterlee & Stephens to appear on its behalf in the above litigation and to defend its interests. Fawcett also agrees to promptly intervene in the New York action and to accept service of a supplemental complaint naming Fawcett as a defendant by reason of its paperback edition of THE IMPLOSION CONSPIRACY.



Leona Nevler

Sworn to before me this

27th day of March, 1974.
Notary Public

THERESA M. GOYETTE
Notary Public, State of New York
Commission Expires March 30, 1975

AFFIDAVIT OF LEONA NEVLER IN SUPPORT OF MOTION TO INTERVENE.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- x

MICHAEL MEEROPOL and ROBERT MEEROPOL,	:	73 Civ. 2720
	:	(HRT)
Plaintiffs,	:	
- against -	:	<u>AFFIDAVIT</u>
LOUIS NIZER and DOUBLEDAY & COMPANY,	:	
INC.,	:	
Defendants.	:	

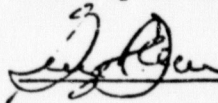
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STATE OF NEW YORK)
 : SS.:
COUNTY OF NEW YORK)

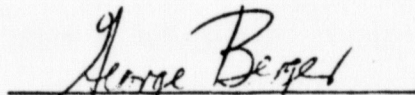
GEORGE BERGER, being duly sworn, deposes and says:

I am a member of the firm of PHILLIPS, NIZER, BENJAMIN, KRIM & BALLON, attorneys for the defendant LOUIS NIZER. I have read the Notice of Motion dated March 28, 1974 seeking leave for FAWCETT PUBLICATIONS, INC. to intervene as a defendant in this action and to permit plaintiffs to move for leave to serve a supplemental complaint naming Fawcett Publications, Inc. as a defendant by reason of its publication of the paperback edition of The Implosion Conspiracy if they should so desire, and the affidavit of Leona Nevler sworn to March 27, 1974 in support thereof. On behalf of the defendant Louis Nizer, I consent to the entry of an order granting the relief therein requested.

Sworn to before me this
29th day of March, 1974.



GEORGE H. FEARON
Notary Public, State of New York
No. 24-1175060
Qualified in Kings County
Commission Expires March 31, 1975


GEORGE BERGER

AFFIDAVIT OF ROBERT M. CALLAGY IN SUPPORT OF
FAWCETTS' MOTION TO INTERVENE.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- -x

MICHAEL MEEROPOL and ROBERT MEEROPOL, :

Plaintiffs, :

73 Civ. 2720

-against- :

LOUIS NIZER and DOUBLEDAY & COMPANY, :
INC.,

Defendants. :

AFFIDAVIT

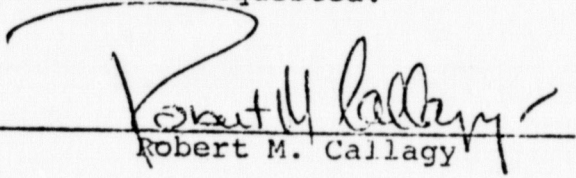
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STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROBERT M. CALLAGY, being duly sworn, deposes and says:

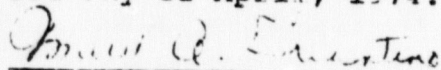
1. I am a member of the firm of Satterlee & Stephens, attorneys for defendant, Doubleday & Company, Inc.

2. I make this affidavit to advise the Court that the defendant Doubleday joins in the application of Fawcett Publications, Inc. to intervene as a defendant in this action and consents to the entry of an order granting the relief requested.


Robert M. Callagy

Sworn to before me this

1st day of April, 1974.



Notary Public

MARY A. TARANTINO
Notary Public, State of New York
No. 20420-1000
Qualified in New York County
Commission Expires 12/31/76

AFFIDAVIT OF MARSHALL PERLIN IN OPPOSITION TO MOTION TO INTERVENE.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x
MICHAEL MEEROPOL and ROBERT MEEROPOL,

Plaintiffs,

73 Civ. 2720
(HRT)

-against

LOUIS NIZER and DOUBLEDAY & COMPANY,
INC.,

Defendants.

AFFIDAVIT IN
OPPOSITION TO
FAWCETT'S MOTION
TO INTERVENE

-----x
STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

MARSHALL PERLIN, being duly sworn, deposes and says that he submits this affidavit in opposition to the motion of Fawcett to intervene as a party defendant.

1. The sole document submitted by Fawcett itself in this proceeding is the Nevler affidavit of March 27, 1974. The affidavit does not aver any knowledge of the facts or issues nor are any grounds for intervention alleged or the nature of the claim or defense asserted. This is the sole basis for the application for intervention.

2. The provisions of Rule 24(c) of the FCRP state that the motion for intervention shall, in addition to setting forth the grounds therefor "shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought". Fawcett, nevertheless, does not tender any pleading whatsoever. The sum total of the allegation in the Nevler affidavit

AFFIDAVIT OF MARSHALL PERLIN IN OPPOSITION TO MOTION TO INTERVENE

is that Fawcett is qualified to do business in New York; that to some undefined extent, has been indemnified by Doubleday; that it "will look" to Doubleday & Company to provide "the primary defense" and it is for this purpose that Satterlee & Stephens are authorized to appear

3. This does not come close to meeting the requirements of Rule 24 and, in particular, Rule 24(c) of the FRCP. While it "agrees to promptly intervene" it tenders no pleading or any claim or defense which it wishes to assert or seek or any relief it wishes of an affirmative or negative character. Fawcett obviously is not stating a claim or defense now in this action - of which it has been long aware - and has studiously avoided appearing and pleading in the Connecticut action. Its motion is, on its face, untimely in that it seeks leave of the Court to have the option to intervene and accept service if plaintiffs serve supplementary pleadings. It does not address itself to the fact that there is another action pending against it in another court.

4. In the affidavit of Robert M. Callagy, he states that this Court conditioned the stay of the Connecticut action upon the filing of an affidavit by Fawcett stating "that the claims asserted in the Connecticut action were subject to indemnification by Doubleday & Company". The affidavit of Nevler makes no such statement or claim; quite to the contrary, it merely states that

AFFIDAVIT OF MARSHALL PERLIN IN OPPOSITION TO MOTION TO INTERVENE

there is some indemnification provision in the contract but it clearly does not state that the claims in the Connecticut action are subject to that indemnification provision. It could not so state because, in fact, the indemnification does not cover all of the claims asserted in the Connecticut action. A reading of the contracts between Doubleday & Company and Fawcett and the contract between Doubleday & Company and Nizer makes this clear.

5. The offer to intervene by Fawcett is conditional in nature and fails to comply with this Court's condition that it appear as a party defendant in this action now. Its counsel knows that it was required to submit a pleading in support of the motion but it did not do so.

6. I incorporate herein and make a part hereof my affidavit of April 1, 1974 heretofore submitted in support of the crossmotion of the plaintiffs and in opposition to the proposed order heretofore submitted to this Court this past week.

7. Since March 19, 1974, varied statements have been made by Mr. Callagy regarding indemnification agreements under various contracts between the parties defendant and between Doubleday and Fawcett. In the Callagy affidavit of March 19, 1974, it is imported in paragraph 4 thereof that the scope of the indemnification between Fawcett and Doubleday & Company and between

AFFIDAVIT OF MARSHALL PERLIN IN OPPOSITION TO MOTION TO INTERVENE

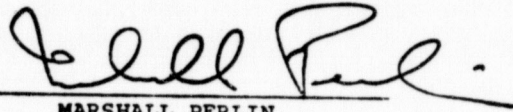
Doubleday & Company and Nizer were the same. It was, in part, upon this allegation that Fawcett was asked to submit an affidavit to the effect that the scope of the indemnification covered all of the claims in the actions. This was contested by the plaintiffs in their affidavit in opposition. The Nevler affidavit fails to meet the condition of this Court or, indeed, articulate the scope of the indemnification in any respect. Mr. Callagy's affidavit of April 3, 1974, in response to my affidavit of April 1, 1974, is completely silent on the scope and nature of the indemnification. The affidavit of Mr. Berger, in behalf of the defendant Nizer, and, indeed, Mr. Callagy's affidavit in behalf of Doubleday & Company dated April 1, 1974, is clearly silent in this regard. In this light, the language of the Nevler affidavit that Fawcett looks to Doubleday "to provide the primary defense" must be read. Fawcett and the defendants know that Fawcett cannot honestly state that the alleged indemnification covers the claims asserted in the Connecticut action. In any event, the motion to intervene raise issues of fact that can only be resolved in an evidentiary hearing.

8. It is respectfully submitted that by reason of the deficiencies of the motions to intervene and the failure of Fawcett to meet the conditions as set forth by this Court, that the injunctive provisions of the

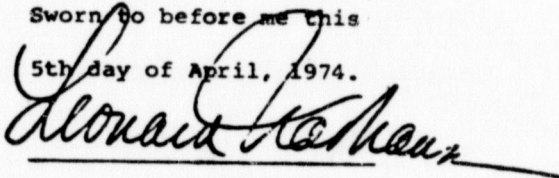
AFFIDAVIT OF MARSHALL PERLIN IN OPPOSITION TO MOTION TO INTERVENE

proposed order submitted to this Court would not become operative. Fawcett further has not sought to intervene and appear "as soon as reasonably practicable in this action".

WHEREFORE, it is respectfully prayed that the motion of Fawcett be, in all respects, denied.


MARSHALL PERLIN

Sworn to before me this
5th day of April, 1974.



LEONARD NATHANSON
Notary Public, State of New York
No. 31-6103125
Qualified in New York County
Commission Expires March 30, 1976

130a

OPINION OF JUDGE TYLER NO. 40548.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

-----X

MICHAEL MEEROPOL and ROBERT MEEROPOL,

Plaintiffs,

against

LOUIS NIZER and DOUBLEDAY & COMPANY, INC.,

Defendants.

73 Civ. 2720 HRT.

-----X

TYLER, D. J.

On March 22, 1974, at 12:30 P.M., there came on for hearing the motion of Defendant Doubleday & Company, Inc. ("Doubleday") herein and Fawcett Publications, Inc. ("Fawcett"), for an order staying all proceedings in a recently filed civil action in the District of Connecticut, No. B-74-73(JCN). At the same time was heard the cross-motion of the plaintiffs in the case and in the new Connecticut action to vacate and to declare null and void *ab initio* the aforesaid show cause order of Doubleday and Fawcett. Fawcett, since March 22, has moved to intervene as a party defendant in this action.

OPINION OF JUDGE TYLER NO. 40548

As plaintiffs' counsel has argued, the original show cause order was technically defective in the sense that it was apparently brought on by the same firm of attorneys representing Doubleday herein, but purporting to appear for Fawcett which at the time was not a party to this New York action. Indeed, plaintiffs' counsel brought this to the attention of Doubleday-Fawcett counsel on the day the show cause order was signed. In any event, on the following day, March 20th, Messrs. Saterlee & Stevene, who represent both Doubleday and Fawcett, served both the court and counsel here and in Connecticut with a letter indicating that the show cause order was being brought on behalf of Doubleday as well as Fawcett.

Still further, it appears that some time between March 19 and March 22, the day of the argument, the plaintiffs in the new Connecticut action filed an amended complaint which is virtually identical to the complaint served in this action, save for some additional details having to do with the fact that Fawcett, under a sublicense agreement from Doubleday, is the paperback publisher and distributor of the Nizer book which is the subject of this suit. It is undisputed that by contractual arrangements between Doubleday

OPINION OF JUDGE TYLER NO. 40548

and Fawcett, the former has agreed to indemnify Fawcett for claims resulting from its publication of the paperback version of the Nizer book. Indeed, on March 28, 1974, Fawcett moved for leave to intervene as a party defendant in this action and to permit plaintiffs to file an amended complaint herein against Fawcett, which motion is hereby granted.

In regard to the latter matter, Fawcett, although apparently a Delaware corporation, has an office and place of business within the Southern District of New York. Fawcett has represented to this court at the hearing on March 22 that it was willing to appear as a party in this action. This court, therefore, had informally indicated to counsel at the conclusion of argument that the intervention of Fawcett in this case would be a condition precedent to any order staying the action in the District of Connecticut. See *MacLaren v. B-I-W Group Inc.*, 329 F. Supp. 545 (S.D. N.Y. 1971).

It was argued by Marshall Ferlin, Esq., attorney for plaintiffs in this action, and Samuel Gruber, Esq., the attorney for plaintiffs in the Connecticut action, that if this court were to grant the relief requested

OPINION OF JUDGE TYLER NO. 40548

by Doubleday and Fawcett, it would have the effect of violating the request of plaintiffs in the Connecticut suit for a jury trial. The significance of this is that in the present case here neither plaintiffs nor defendants have demanded a jury trial. In my opinion, this is not sufficient to require that the relief granted by Doubleday and Fawcett be denied. Once Fawcett appears as a party defendant in this New York action, counsel for plaintiff may then consider whether or not it is permissible and desirable under the law to demand that plaintiffs' claims against Fawcett be tried to a jury. If such a jury demand is properly and timely made, it will be considered and allowed as the law requires.

In summary, it appears that plaintiffs' claims against all defendants, including Fawcett, can be heard in this court, with resultant savings of time and money to the federal courts, the litigants and their counsel. Thus, contemporaneously with the filing of this memorandum, I am signing and filing an order (1) staying the District of Connecticut action in all respects: (2) denying plaintiffs' cross-motion to vacate the show cause order heard on March 22, 1974; and (3) granting the motion of Fawcett to intervene as a party

OPINION OF JUDGE TYLER NO. 40548

defendant herein and to permit plaintiffs to file a supplemental complaint herein against Fawcett. Further, it should be noted that the aforementioned order also denies plaintiffs' application, filed on April 1, 1974, to postpone settlement of said order until April 5, 1974, or, in the alternative, to stay that order pending appeal therefrom. In my view, delay as sought by plaintiffs is unwarranted; further, since all parties are now before this court with no prejudice to plaintiffs, any appeal from these rulings would seem to be dilatory and frivolous.

Dated: April 3, 1974

D. J. TYLER, JR.
U. S. D. J.

FAWCETT'S PROPOSED ORDER STAYING CONNECTICUT ACTION.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x
MICHAEL MEEROPOL and ROBERT MEEROPOL, :
Plaintiffs, :
-against- : 73 Civ. 2720
LOUIS NIZER and DOUBLEDAY & COMPANY, : (HRT)
INC., : ORDER STAYING
Defendants. : CONNECTICUT ACTION
: :
-----x

Defendant, Doubleday & Company, Inc. (Doubleday),
joined by Fawcett Publications, Inc. (Fawcett), a defendant in an
action entitled Michael Meeropol, a/k/a Michael Allen Rosenberg
and Robert Meeropol, a/k/a Robert Harry Rosenberg v. Fawcett
Publications, Inc., bearing File No. B-74-73 Civ. (JAN), which
was instituted by plaintiffs in the U.S. District Court for the
District of Connecticut (Connecticut action) on March 11, 1974,
having moved by order to show cause for an order staying all pro-
ceedings in the Connecticut action pending a final determination
of this action,

NOW, upon reading the order to show cause dated March
19, 1974 containing a temporary stay of the Connecticut action,
the affidavit of Robert M. Callagy, sworn to March 19, 1974 and
the letter of Robert M. Callagy to the Court dated March 20, 1974,
all with proof of proper service upon the New York and Connecticut
attorneys for the plaintiffs, submitted in support of said motion
for a permanent stay of the Connecticut action, and upon the

FAWCETT'S PROPOSED ORDER STAYING CONNECTICUT ACTION

notice of motion of plaintiffs to vacate and set aside the order to show cause and temporary stay in this action dated March 21, 1974 and the affidavits of Marshall Perlin, Esq. and Samuel Gruber, Esq., both sworn to March 22, 1974, submitted in opposition to the motion for a permanent stay and in support of plaintiffs' motion to vacate the temporary stay, all with proof of service upon the attorneys for the defendants in this action and the attorneys for the defendant in the Connecticut action, and it appearing to the Court that the Connecticut action arises by reason of the publication by Fawcett of the paperback edition of THE IMPLOSION CONSPIRACY, the book which is the subject of this action, and because Fawcett has been indemnified by Doubleday against claims arising out of its publication of the paperback edition of THE IMPLOSION CONSPIRACY that said Connecticut action for all purposes involves the same parties and the same subject matter as this action which was commenced more than eight months before the Connecticut action and it having been represented to this Court that Fawcett is doing business in New York and has agreed to intervene in this action and accept service of a supplemental summons and complaint which names Fawcett as a defendant by reason of its publication of the paperback edition of THE IMPLOSION CONSPIRACY and this Court having heard Robert M. Callagy on behalf of defendant Doubleday and defendant Fawcett in the Connecticut action in support of said motion and in opposition to plaintiffs' motion to vacate, and Marshall Perlin and Samuel Gruber, attorneys for the plaintiffs in the New York and Connecticut actions, respectively, in opposition to the motion for a permanent stay and in support of plaintiffs' motion to vacate the temporary stay and due deliberation having been had thereon and

FAWCETT'S PROPOSED ORDER STAYING CONNECTICUT ACTION

this Court having rendered its decision in writing denying plaintiffs' motion to vacate the temporary stay and granting the motion of defendant Doubleday and defendant Fawcett in the Connecticut action to permanently stay the Connecticut action,

NOW, upon motion of Satterlee & Stephens, attorneys for defendant Doubleday and defendant Fawcett in the Connecticut action, it is

ORDERED, that the action entitled Michael Meeropol, a/k/a Michael Allen Rosenberg and Robert Meeropol, a/k/a Robert Harry Rosenberg v. Fawcett Publications, Inc., bearing File No. B-74-73 Civ. (JAN) be, and the same hereby is, permanently stayed and plaintiffs and their attorneys be, and they hereby are, stayed from taking any further action or proceedings in the Connecticut action until entry of a final judgment in this action on condition that the defendant Fawcett in the Connecticut action appear as soon as reasonably practicable in this action; and it is further

ORDERED, that plaintiffs' motion to vacate the order to show cause and temporary stay be, and the same hereby is, denied.

U.S.D.J.

Dated: New York, N. Y.
March 27, 1974.

TRANSCRIPT OF PROCEEDINGS ON MOTION TO INTERVENE.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

MEEROPOL,

VS.

FAWCETT, DOUBLEDAY, et. al.

Defendants.

B e f o r e :

HONORABLE HAROLD RY. TYLER, JR.,

District Judge.

United States Court House,
New York, New York,
April 5, 1974.

A p p e a r a n c e s :

MARSHALL PERLIN, Esq.,
Attorney for Plaintiffs.

TRANSCRIPT OF PROCEEDINGS ON MOTION TO INTERVENE

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2 MR. PERLIN: There is a motion returnable this
3 afternoon at 2:15, and I have some papers in opposition.

4 THE COURT: I don't quite understand what is going
5 on here. You are quite right, there was a notice of motion
6 returnable today.

7 MR. PERLIN: Right.

8 THE COURT: To me, that was, insofar as the date
9 was concerned, an absolute nullity because, as you know, two
10 weeks ago I in effect granted the motion of defendants
11 Fawcett and Nizer, Doubleday, and so on -- not Nizer --

12 MR. PERLIN: Nizer did not.

13 THE COURT: No, that's right, Doubleday and Fawcett.
14 I conditioned that on Fawcett's agreeing to intervene in
15 this case.

16 MR. PERLIN: They moved to intervene improperly,
17 and it doesn't constitute a motion to intervene, and that's
18 why I have papers directed to this particular point.

19 THE COURT: No, no, listen, wait a minute. I don't
20 want to be rude, but please let me finish.

21 I wrote a memorandum; I filed an order two days ago,
22 I think it was, explaining all of this. You read that?

23 MR. PERLIN: Not only have I not read it, I only
24 found out about it this morning when I got a card from the
25 office of the Clerk. I called your office and said in view

TRANSCRIPT OF PROCEEDINGS ON MOTION TO INTERVENE

1 MID

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2 of the fact that the motion is on this afternoon, would it
3 be possible to send down a messenger to get an extra copy
4 or I'd run down to see it so I would know, as it pertains
5 to the matter on this afternoon, which I have specific plead-
6 ings in response to it; and I wastold that none could be
7 available, and I said I'd be down here this afternoon.

8 THE COURT: Wait a minute. You were told none what?

9 MR. PERLIN: Was available in your office, because
10 I indicated the hour that I received notice, approximately
11 eleven o'clock this morning that --

12 THE COURT: That is one of the fastest I have ever
13 heard in the total time I have been admitted to practice in
14 New York. Don't you ever read the Law Journal?

15 MR. PERLIN: That's right, I read the Law Journal.
16 I looked in yesterday's Law Journal, and it was not in yes-
17 terday's Law Journal. I most definitely did look. I didn't
18 check today's because on the second mail, about the time I was
19 in, I got a postcard.

20 THE COURT: All right. It is perfectly possible there
21 is a lag in the Law Journal, but in any event, you certainly
22 are free to go to my chambers and read it if you like, but
23 here is what I am trying to tell you: I made an oral ruling.
24 I have now written a memorandum. I have consulted with Judge
25 Newman. Judge Newman agrees that even if I didn't do all the
splendid things that I have done here, he was about to transfer

TRANSCRIPT OF PROCEEDINGS ON MOTION TO INTERVENE 4

2 the case to this district in any event, and I quite agree
3 with him, he should.

4 So I don't know what all this marvelous skirmishing
5 is about.

6 MR. PERLIN: I submit it is not skirmishing, number
7 one. I respectfully understand your Honor disagrees with
8 the points we have been making, and I don't want to here
9 reargue anything that came before --

10 THE COURT: When I said skirmishing, I meant I
11 couldn't understand -- and I am not blaming you for this --
12 I couldn't understand this fancy notice of motion returnable
13 today, because I said to Fawcett and Doubleday I was granting
14 their motion to stay this District of Connecticut case
15 upon condition that Fawcett intervene here.

16 MR. PERLIN: Now, your Honor, the rules --

17 THE COURT: And they have intervened.

18 MR. PERLIN: I respectfully except, your Honor.
19 They have not.

20 THE COURT: I know you except to everything I do.
21 I expect that.

22 MR. PERLIN: No, I don't, your Honor. We do have
23 Rule 24 that says in order to intervene you have to do some-
24 thing, which they blithely ignored.

25 THE COURT: What is that?

TRANSCRIPT OF PROCEEDINGS ON MOTION TO INTERVENE 5

2 MR. PERLIN: You have to file a copy of your
3 proposed pleading under which you wish to intervene and
4 assert a claim and a right.

5 THE COURT: We are not proceeding under Rule 24.
6 WE are proceeding on an order of this Court conditioning
7 the granting of other relief upon Fawcett appearing here
8 without any fancy nonsense, and filing an answer to your
9 amended complaint which still has to come against Fawcett.

10 So you better go upstairs in my chambers and read
11 that memorandum.

12 MR. PERLIN: I will read the memorandum. May I --

13 THE COURT: Because I am not bound by any fancy notice
14 of motion that lawyers for Fawcett put in, and I am not
15 about to fall over and play dead and claim this is a Rule
16 24 situation. It isn't.

17 MR. PERLIN: I respectfully submit it is, and may I
18 at least, so the record be complete, submit my affidavit
19 directly to that very point?

20 THE COURT: Mr. Perlin, you can submit anything
21 you care to, but I am telling you right now that these
22 quaint legalisms of yours are almost certainly beside the
23 point because I told Fawcett two weeks ago today that they
24 couldn't get anywhere with their application unless they
25

TRANSCRIPT OF PROCEEDINGS ON MOTION TO INTERVENE

6

2 agreed to come into this court.

3 They did so. They are now bound by their agree-
4 ment to come in here, and that is what is happening.

5 MR. PERLIN: But they didn't come in, your Honor.

6 THE COURT: They did because I have written an
7 opinion, and I have written an order, and I have signed the
8 order and I have filed the order, and the order says they are
9 here. Whether they like it or you like it, fine, you have
10 got to go to another court then.

11 MR. PERLIN: Right, or whether they are here.

12 THE COURT: You can rest assured as long as I am
13 able to live and breathe, they will be here, and if not,
14 you move for sanctions, but I refuse to be bound in by
15 your notions and their notions of what is going on here,
16 because they don't accord with my notions.

17 MR. PERLIN: May I respectfully say --

18 THE COURT: My notions, at least, are recorded in
19 print, and I suggest you read them.

20 MR. PERLIN: Right.

21 THE COURT: If you disagree with them, you then have
22 your remedies in appellate tribunals, I am sure.

23 MR. PERLIN: Yes, and I would have liked, in seeking
24 the remedy, at least to have an opportunity as to their
25 motion to submit an affidavit when I --

TRANSCRIPT OF PROCEEDINGS ON MOTION TO INTERVENE 6a

2 THE COURT: I said you can submit whatever you
3 care to submit to make your record. I don't care.

4 MR. PERLIN: May I submit this affidavit?

5 THE COURT: Fine. All right.

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ANSWER OF DEFENDANT FAWCETT PUBLICATIONS, INC.
 UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x

MICHAEL MEEROPOL and ROBERT	:	
MEEROPOL,	:	
	:	
Plaintiffs,	:	73 Civ. 2720 (HRT)
	:	
-against-	:	
	:	<u>ANSWER</u>
LOUIS NIZER, DOUBLEDAY & COMPANY,	:	
INC. and FAWCETT PUBLICATIONS, INC.,	:	
	:	
Defendants.	:	

-----x

Defendant, Fawcett Publications, Inc. ("Fawcett"), by its attorneys, Satterlee & Stephens, Inc., for its answer to the complaint, alleges as follows:

FIRST: Upon information and belief, denies each and every allegation contained in paragraph 1.

SECOND: Upon information and belief, denies each and every allegation contained in paragraph 2, except that it alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations (1) that the plaintiffs are citizens of the Commonwealth of Massachusetts, (2) that the defendant, Louis Nizer ("Nizer"), is a citizen of the State of New York and has his principal place of business in the City, County and State of New York, and (3) that the defendant, Doubleday & Company, Inc. ("Doubleday"), is a corporation organized under the laws of the State of New York and has its principal place of business in the City, County and State of New York.

ANSWER OF DEFENDANT FAWCETT PUBLICATIONS, INC.

THIRD: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in paragraph 3, except that it admits that Julius and Ethel Rosenberg were convicted of violating 50 U.S.C. §34 and that sentences of death imposed upon them on or about April 5, 1951 by Irving R. Kaufman, then a Judge of the United States District Court for the Southern District of New York, were carried out at the New York State Penitentiary in Ossining, New York, on June 19, 1953.

FOURTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16.

FIFTH: Upon information and belief denies each and every allegation contained in paragraph 17.

SIXTH: Denies each and every allegation contained in paragraph 18, except denies knowledge or information sufficient to form a belief as to whether from February, 1973 and continuously since then defendant Doubleday has been publishing, selling, and otherwise marketing the book entitled THE IMPLOSION CONSPIRACY.

SEVENTH: With respect to paragraph 19, repeats and realleges each and every denial or admission heretofore pleaded in answer to paragraphs 1 through 18, inclusive, with the same force and effect as if fully set forth herein.

EIGHTH: Upon information and belief, denies each and every allegation contained in paragraphs 20, 21, 22, 23, 24, 25, 26, 27 and 28, and respectfully refers the Court to THE IMPLOSION CONSPIRACY for the contents thereof.

ANSWER OF DEFENDANT FAWCETT PUBLICATIONS, INC.

NINTH: With respect to paragraph 29, repeats and re-alleges each and every denial or admission heretofore pleaded in answer to paragraphs 1 through 27, inclusive, with the same force and effect as if fully set forth herein.

TENTH: Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30.

ELEVENTH: Upon information and belief, denies each and every allegation contained in paragraph 31.

AS AND FOR A FIRST AFFIRMATIVE
DEFENSE TO COUNTS ONE, TWO AND
THREE, DEFENDANT FAWCETT ALLEGES
UPON INFORMATION AND BELIEF

TWELFTH: The complaint fails to state a claim against Fawcett upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE
DEFENSE TO COUNT ONE, DEFENDANT
FAWCETT ALLEGES UPON INFORMATION
AND BELIEF

THIRTEENTH: Any utilization by defendant Fawcett of material from the DEATH HOUSE LETTERS as to which a valid copyright may exist amounted to fair use thereof.

AS AND FOR A THIRD AFFIRMATIVE
DEFENSE TO COUNT ONE, DEFENDANT
FAWCETT ALLEGES UPON INFORMATION
AND BELIEF

FOURTEENTH: The plaintiffs lack the requisite standing to institute this action.

ANSWER OF DEFENDANT FAWCETT PUBLICATIONS, INC.

AS AND FOR A FOURTH AFFIRMATIVE
DEFENSE TO COUNT ONE, DEFENDANT
FAWCETT ALLEGES UPON INFORMATION
AND BELIEF

FIFTEENTH: Consent to the use by defendants Nizer and Doubleday of any material which allegedly was the subject of copyright was given by or on behalf of the copyright owner.

AS AND FOR A FIFTH AFFIRMATIVE
DEFENSE TO COUNT ONE, DEFENDANT
FAWCETT ALLEGES UPON INFORMATION
AND BELIEF

SIXTEENTH: The material complained of as infringed by defendant Fawcett, or a substantial portion thereof, is in the public domain.

AS AND FOR A SIXTH AFFIRMATIVE
DEFENSE TO COUNT ONE, DEFENDANT
FAWCETT ALLEGES UPON INFORMATION
AND BELIEF

SEVENTEENTH: Any alleged copyright obtained by the plaintiffs' predecessors was abandoned, lost or dedicated by virtue of the offering for sale in the United States of an English language edition containing the alleged copyrighted material in violation of the Copyright Law of the United States.

AS AND FOR A SEVENTH AFFIRMATIVE
DEFENSE TO COUNT ONE, DEFENDANT
FAWCETT ALLEGES UPON INFORMATION
AND BELIEF

EIGHTEENTH: The plaintiffs are guilty of laches and come into Court with unclean hands.

ANSWER OF DEFENDANT FAWCETT PUBLICATIONS, INC.

AS AND FOR A SECOND AFFIRMATIVE
DEFENSE TO COUNT TWO, DEFENDANT
FAWCETT ALLEGES UPON INFORMATION
AND BELIEF

NINETEENTH: THE IMPLOSION CONSPIRACY was written by defendant, Louis Nizer, a famous trial lawyer of national reputation, and an author of a number of literary works which, generally speaking, have been received with considerable acclaim both by literary critics and the reading public. Mr. Nizer's MY LIFE IN COURT, THE JURY RETURNS, AN ANALYSIS AND COMMENTARY ON THE OFFICIAL WARREN COMMISSION REPORT -- as was THE IMPLOSION CONSPIRACY -- were published in the hard cover edition by defendant Doubleday and in the paperback form by defendant Fawcett. In the course of its dealings with defendant Doubleday over many years, relative to publication in paperback form of literary works which were originally published in hard cover by defendant Doubleday, defendant Fawcett has formed a high opinion of defendant Doubleday's reliability as a publisher of the highest standards.

THE IMPLOSION CONSPIRACY is, upon information and belief, a true account of a trial of an indictment handed down in the United States District Court for the Southern District of New York and the resulting verdict and sentencing of Julius and Ethel Rosenberg, charging them with passing to Soviet Russia the secrets of the device that triggered the atomic bomb. There was, attendant upon the trial, conviction and subsequent execution of Julius and Ethel Rosenberg, world-wide press coverage of these events and there has been ever since, continuing to the present time, substantial public interest in the aforesaid

ANSWER OF DEFENDANT FAWCETT PUBLICATIONS, INC.

events. At the time of publication, and at all times thereafter, defendant Fawcett was informed that defendant Doubleday believed that all statements of fact contained in THE IMPLOSION CONSPIRACY were and are true and that any comment upon said facts by the author was fair and reasonable and, therefore, that in publishing THE IMPLOSION CONSPIRACY in the hard cover edition, the defendant Doubleday conducted itself according to the usual practices then and now obtaining in the business of the publication of trade books. Based on the above, defendant Fawcett, in publishing the paperback edition of said book, was acting within the rights provided to it, as to all citizens, by the First Amendment to the Constitution of the United States. The context of the book consisted of matter the publication of which falls within the protection of the First Amendment to the Constitution of the United States.

WHEREFORE, Fawcett demands judgment dismissing the plaintiffs' complaint herein, together with costs and disbursements, and for such other and further relief as may be just and proper.

Dated: New York, N. Y.
April 10, 1974.

SATTERLEE & STEPHENS

By

Robert M. Gallagher
A Member of the Firm

Attorneys for defendant,
FAWCETT PUBLICATIONS, INC.
Office & P. O. Address
277 Park Avenue
New York, New York 10017

Telephone: (212) 826-6200

PLAINTIFFS' DEMAND FOR JURY TRIAL.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
----- X

MICHAEL MEEROPOL and ROBERT MEEROPOL,

Plaintiffs,

73 Civ. 2720
(HRT)

-against-

LOUIS HIZER, DOUBLEDAY & COMPANY, INC.
and FAWCETT PUBLICATIONS, INC.,

DEMAND FOR JURY TRIAL

Defendants.

----- X

S I R S :

PLEASE TAKE NOTICE that the plaintiffs demand
trial by jury in this action.

Dated: New York, New York
April 20, 1974

Marshall Perlin

Attorney for Plaintiffs
36 West 44th Street
New York, New York 10036
(212) 661-1886

TO:

CLERK
United States District Court
Southern District of New York
United States Court House
Foley Square
New York, New York

152a

PLAINTIFFS' DEMAND FOR JURY TRIAL

TO:

PHILLIPS, NIZER, BENJAMIN,
KRIM & BALLON
Attorneys for Defendant Louis Nizer
40 West 57th Street
New York, New York 10019

SATTERLEE & STEPHENS
Attorneys for Defendants
Doubleday & Company, Inc. and
Fawcett Publications, Inc.
277 Park Avenue
New York, New York 10017

PLAINTIFFS' MOTION TO STRIKE ANSWER.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X
MICHAEL MEEROPOL and ROBERT
MEEROPOL,

Plaintiffs,

-against-

LOUIS NIZER, DOUBLEDAY &
COMPANY, INC. and FAWCETT
PUBLICATIONS, INC.,

Defendants.
-----X

:

:

:

:

:

:

73 Civ. 2720
(HRT)

NOTICE OF MOTION
TO STRIKE ANSWER

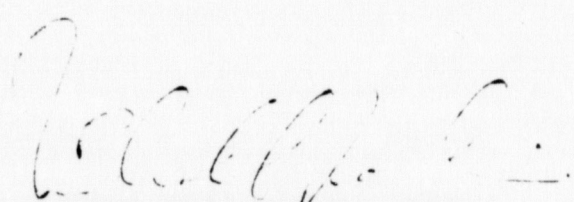
S I R S:

PLEASE TAKE NOTICE that the plaintiffs, upon the proceedings heretofore had and the files and records of this case, will move this Court before the Hon. Harold R. Tyler, Jr., in Room 128, the United States Court House, Foley Square, New York, New York, at 2:00 P.M. on May 24, 1974, or as soon thereafter as counsel can be heard for an order, pursuant to Rules 12, 19 and 24 of the Federal Rules of Civil Procedure, striking the answer of defendant Fawcett Publications, Inc. in that said answer is redundant, immaterial and impertinent and sham; said answer fails to state a claim, interest or defense upon which relief can be granted; and fails to assert any claim, interest or defense giving the defendant any standing to plead by answer or otherwise in the within action; and that said answer was not served

PLAINTIFFS' MOTION TO STRIKE ANSWER

or filed in good faith and constitutes an abuse of the processes of this Court.

Dated: New York, New York
April 30, 1974



MARSHALL PERLIN
Attorney for Plaintiffs,
Michael Meeropol and
Robert Meeropol
36 West 44th Street
New York, New York 10036
(212) 661-1889

TO:

SATTERLEE & STEPHENS
Attorneys for defendants,
Doubleday & Company, Inc.
and Fawcett Publications, Inc.
277 Park Avenue
New York, New York 10017

PHILLIPS, NIZER, BENJAMIN,
KRIM & BALLON
Attorneys for defendant,
Louis Nizer
40 West 57th Street
New York, New York 10019

155a

PLAINTIFFS' MOTION TO STRIKE ANSWER

C 321—Affidavit of Service of Papers by Mail.
Affirmation of Service by Mail on Reverse Side.

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80 EXCHANGE PL. AT BROADWAY, N.Y.C. 10004

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Index No. 73 Civ. 2720

MICHAEL MEEROPOL and ROBERT MEEROPOL,

Plaintiff s

against

AFFIDAVIT OF SERVICE
BY MAIL

LOUIS NIZER, DOUBLEDAY & COMPANY, INC.
and FAWCETT PUBLICATIONS, INC.,

Defendant s

STATE OF NEW YORK, COUNTY OF NEW YORK

SS.:

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at New York, New York.

That on April 30, 19 74 deponent served the annexed Notice of Motion to Strike Answer on Satterlee & Stephens, Esqs., and Phillips, Nizer, & Benjamin, Krim & Ballon, Esqs., attorneys for defendants in this action ~~xxxxxxxxxx~~ at 277 Park Avenue, New York, N.Y. and 40 West 57th Street, New ~~xxxxxxxxxx~~ York, New York, the respective addresses ~~xxxxxxxxxx~~ designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in—~~xxxxxxxxxx~~ official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me this 30th
day of April, 1974.

The name signed must be printed beneath
Roberta Gassman

DEFENDANTS DOUBLEDAY'S AND FAWCETT'S MOTION TO
STRIKE DEMAND FOR JURY TRIAL.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x

MICHAEL MEEROPOL and ROBERT MEEROPOL,	:	
Plaintiffs,	:	73 Civ. 2720
	:	(HRT)
-against-	:	
LOUIS NIZER, DOUBLEDAY & COMPANY, INC.	:	MOTION TO STRIKE
and FAWCETT PUBLICATIONS, INC.,	:	DEMAND FOR
	:	<u>JURY TRIAL</u>
Defendants.	:	
	:	

-----x

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of Robert M. Callagy, sworn to April 29, 1974, and plaintiffs' demand for jury trial dated April 20, 1974, Louis Nizer and Doubleday & Company, Inc., defendants, will move this Court before Hon. Harold R. Tyler, Jr. in Room 128, U. S. Court House, Foley Square, New York, New York, at 2 p.m. on May 10, 1974, or as soon thereafter as counsel can be heard, for an order pursuant to Rules 38 and 39 of the Federal Rules of Civil Procedure striking the demand for jury trial heretofore served by plaintiffs on the grounds that plaintiffs have waived any right to trial by jury in this action as against defendants Nizer and Doubleday in that such demand was not served within ten days after service of the last pleading relating to the claims against said defendants Nizer and Doubleday.

PLEASE TAKE FURTHER NOTICE that defendant, Fawcett Publications, Inc., will move this Court at the same time and

DEFENDANTS DOUBLEDAY'S AND FAWCETT'S MOTION TO
STRIKE DEMAND FOR JURY TRIAL

place as aforesaid for an order pursuant to Rules 38 and 39 of the Federal Rules of Civil Procedure striking plaintiffs' demand for jury trial insofar as it may relate to defendant Fawcett on the grounds that no relief against defendant Fawcett has been requested in this action and therefore the demand for jury trial as against defendant Fawcett is premature, and for such other and further relief as to this Court may seem just and proper.

Dated: New York, N. Y.
April 29, 1974.

Yours, etc.,

SATTERLEE & STEPHENS

By _____

A Member of the Firm

Attorneys for defendants,
DOUBLEDAY & COMPANY, INC. and
FAWCETT PUBLICATIONS, INC.
Office & P. O. Address
277 Park Avenue
New York, New York 10017
(826-6200)

PHILLIPS, NIZER, BENJAMIN, KRIM
& BALLON

By _____

A Member of the Firm

Attorneys for defendant, LOUIS NIZER
Office & P. O. Address
40 West 57th Street
New York, New York 10019
(977-9700)

TO:

MARSHALL PERLIN, Esq.
Attorney for Plaintiffs
36 West 44th Street
New York, New York 10036

AFFIDAVIT OF ROBERT M. CALLAGY IN SUPPORT OF MOTION.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----x

MICHAEL MEEROPOL and ROBERT MEEROPOL,	:	
	:	
Plaintiffs,	:	73 Civ. 2720
	:	(HRT)
-against-	:	
	:	
LOUIS NIZER, DOUBLEDAY & COMPANY, INC.	:	<u>AFFIDAVIT</u>
and FAWCETT PUBLICATIONS, INC.,	:	
	:	
Defendants.	:	
	:	

-----x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ROBERT M. CALLAGY, being duly sworn, deposes and says:

1. I am a member of the firm of Satterlee & Stephens, attorneys for the defendants, Doubleday & Company, Inc. (Doubleday) and Fawcett Publications, Inc. (Fawcett), in this litigation. I make this affidavit in support of a motion by all defendants to strike plaintiffs' demand for a jury trial, apparently directed to all defendants, dated April 20, 1974, on the grounds that plaintiffs have waived a trial by jury as against defendants, Louis Nizer (Nizer) and Doubleday, and their demand is premature as against defendant Fawcett since they have asserted no claims against Fawcett in this action.

2. This action was instituted against defendants Nizer and Doubleday on June 19, 1973. Said defendants served their answers to the complaint on July 25 and July 24, 1973, respectively. No further pleadings were served after July 25, 1973 and

AFFIDAVIT OF ROBERT M. CALLAGY IN SUPPORT OF MOTION

no demand for a jury trial was made until April 22, 1974, when defendant Nizer's attorneys were served with a demand for jury trial (a copy of which is annexed hereto as Exhibit A). My firm, as attorneys for Doubleday and Fawcett, received a copy of plaintiffs' demand (Exhibit A) on April 23, 1974.

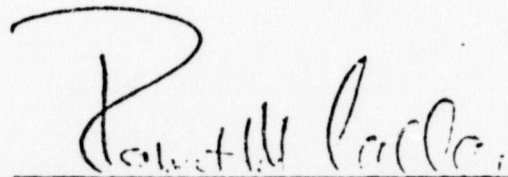
3. More than ten days expired after the service of the last pleading (almost nine months elapsed) and plaintiffs did not serve a demand for jury trial and therefore, pursuant to the provisions of Rule 38 (d) of the Federal Rules of Civil Procedure, plaintiffs unequivocally waived any right to trial by jury as to defendants Nizer and Doubleday.

4. With respect to defendant Fawcett, plaintiffs' jury demand is premature and therefore must be stricken. By order of this Court entered April 4, 1974, Fawcett was permitted to intervene as a party defendant. At no time since the entry of the order permitting intervention have plaintiffs served a supplemental or amended complaint. Although Fawcett on April 19, 1974 served an answer to the only complaint in this action, this complaint in no way named Fawcett or in any way made a claim against it. By reason of the fact that plaintiffs have made no claim against Fawcett, nor has Fawcett been denominated by plaintiffs in the existing complaint, the demand for a jury trial as against Fawcett is premature.

5. It is respectfully submitted that, in view of the obvious lack of merit of this action, this Court should not

AFFIDAVIT OF ROBERT M. CALLAGY IN SUPPORT OF MOTION

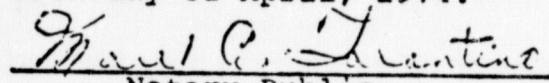
overlook the unequivocal waiver by plaintiffs by virtue of
their failure to timely demand a jury trial in this action.



Robert M. Callagy

Sworn to before me this

29th day of April, 1974.


Notary Public

MARY A. TARANTINO
Notary Public, New York
No. 30-19
Qualified in New York County
Certificate Filed in New York County
Commission expires March 30, 1975

PLAINTIFFS' CROSS-MOTION PURSUANT TO RULES 38 AND 39.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- x	
MICHAEL MEEROPOL and ROBERT	:
MEEROPOL,	:
	:
Plaintiffs,	:
	:
-against-	:
	:
LOUIS NIZER, DOUBLEDAY & COMPANY, INC.,	:
and FAWCETT PUBLICATIONS, INC.,	:
	:
Defendants.	:
----- x	

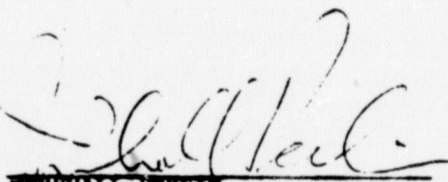
73 Civ. 2720
(MRT)

MOTION

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of MARSHALL PERLIN, sworn to the 17th day of May, 1974 and the proceedings heretofore had and the exhibits attached thereto, the undersigned will cross-move this Court before the Honorable Harold R. Tyler, Jr., in Room 128, United States Courthouse, Foley Square, New York, New York, on May 17th, 1974, at 2:15 P.M., or as soon thereafter as counsel can be heard for an order pursuant to Rules 38 and 39 of the Federal Rules of Civil Procedure granting a jury trial on all of the pleadings on all of the parties on all of the matters to be at issue by the pleadings of all of the parties herein, and for such other and further relief as to this court may seem just and proper.

Dated: New York, New York
May 17, 1974


MARSHALL PERLIN
Attorney for Plaintiffs
36 West 44th Street
New York, New York 10036
(212) 661-1889

PLAINTIFFS' CROSS-MOTION PURSUANT TO RULES 38 AND 39

TO:

SATTERLEE & STEPHENS

Attorneys for Defendants,

Doubleday & Company, Inc.

and Fawcett Publications, Inc.

277 Park Avenue

New York, New York 10017

PHILLIPS, NIZER, BENJAMIN

KRIM & BALLON

Attorneys for Defendant,

Louis Nizer

40 West 57th Street

New York, New York 10019

AFFIDAVIT OF MARSHALL PERLIN IN OPPOSITION TO DEFENDANTS'
MOTIONS TO STRIKE DEMAND FOR JURY TRIAL AND IN SUPPORT
OF PLAINTIFFS CROSS-MOTION.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- x

MICHAEL MEEROPOL and ROBERT	:	
MEEROPOL,	:	
	:	73 Civ. 2730
Plaintiffs,	:	(HRT)
	:	
-against-	:	
	:	<u>AFFIDAVIT</u>
LOUIS NIZER, DOUBLEDAY & COMPANY,	:	
INC. and FAWCETT PUBLICATIONS, INC.,	:	
	:	
Defendants.	:	

----- x

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

MARSHALL PERLIN, being duly sworn, deposes and
says:

1. I submit this affidavit in opposition to the defendants' motions to strike the demand for a jury trial. In the alternative, were this Court to conclude that the demand for a jury trial was not timely as to certain or all of the defendants, that this Court pursuant to Rule 39(b) grant a jury trial for all of the issues raised by the pleadings of all of the parties.
2. The last pleading in this action was filed by defendant. Fawcett on April 10, 1974, the demand for a jury trial was served on April 20, 1974, and thus was timely.
3. The defendant Fawcett moved to intervene and this Court granted it leave to intervene on papers, inter alia,

AFFIDAVIT OF MARSHALL PERLIN IN OPPOSITION TO DEFENDANTS'
MOTIONS TO STRIKE DEMAND FOR JURY TRIAL AND IN SUPPORT
OF PLAINTIFFS CROSS-MOTION

that included the pleadings that were instituted against defendant Fawcett in the Federal District Court in Connecticut. Attached hereto and made part hereof are the pleadings and amended pleadings in the Connecticut action. Due and timely demand for a jury trial was filed in the Connecticut action. The answer of defendant Fawcett standing by itself was a "last pleading" which made timely the demand for a jury trial in this action. Read in the context of the proceedings heretofore had and the papers underlying the motion to intervene further substantiate the timeliness and appropriateness of the demand for a jury trial in this action. It should be noted that the intervention was over the opposition of the plaintiffs and a result of affirmative action by the defendants all of which led to the "last pleading".

4. In Paragraph THIRTEENTH of defendant Fawcett's answer, Fawcett alludes to the fact that it has used in its publication certain copyright letters of the plaintiffs and justifies its use under the doctrine of fair use. In Paragraph SIXTEENTH of its answer, defendant Fawcett refers to the material which it is claimed it infringed upon and justifies the same on the grounds that the material was in the public domain. In Paragraph NINETEENTH of its answer, defendant Fawcett pleads as an affirmative defense that it relied on defendant Doubleday in Fawcett's publication of the paperback book in that it had formed a high opinion of defendant Doubleday's reliability. Fawcett further pleads

AFFIDAVIT OF MARSHALL PERLIN IN OPPOSITION TO DEFENDANTS'
MOTIONS TO STRIKE DEMAND FOR JURY TRIAL AND IN SUPPORT
OF PLAINTIFFS CROSS-MOTION

that in publishing its paperback edition it was entitled to rely upon the protection of certain constitutional rights. In Paragraph TWELFTH, defendant Fawcett alleges that the complaint fails to state a cause of action against it.

4. In light of all of the above and the matters that will come to issue as a result of Fawcett's intervention, the framing of all of the issues raised by the pleadings were not finally framed until the pleading of April 10, 1974 and hence the plaintiffs had the right and the option at that time to demand and obtain a jury trial on all of the issues involving all of the defendants.

5. The theory of intervention on the part of defendants was that they wished to avoid multiplicity of actions, unnecessary multiple litigation and wished to invoke the principal of judicial economy in the administration of the law, and they so sought to merge all of the issues involving the plaintiffs with all of the defendants.

6. In the opinion of this Court, dated April 3, 1974, the following sentence appears:

"It is undisputed that by contractual arrangements between Doubleday and Fawcett, the former has agreed to indemnify Fawcett for claims resulting from its publication of the paperback version of the Miser book."

This was disputed by the plaintiffs. I make this point not to reargue the prior motions which this court dealt with in that opinion, but so that the record be complete and correct. The indemnification given by Doubleday did not cover all

AFFIDAVIT OF MARSHALL PERLIN IN OPPOSITION TO DEFENDANTS'
MOTIONS TO STRIKE DEMAND FOR JURY TRIAL AND IN SUPPORT
OF PLAINTIFFS CROSS-MOTION

claims resulting from the publication of the book and indeed the indemnification given Doubleday by Fawcett was substantially more limited than the indemnification given by Hizer to Doubleday and would exclude the causes of action reflected in the second count of the instant complaint, as well as the second count in the Connecticut action, although these two counts are not at all identical.

7. It cannot seriously be maintained that in the context of the above the demand for the jury trial was not timely. Moreover, it cannot be disputed in any way with respect to Defendant Fawcett. In light of the rationale justifying the intervention upon which the defendants move and upon which this Court acted, there should be a single fact finding body for all of the issues for all of the parties and in this instance it should be a jury which the plaintiff demands.

8. Were this Court to conclude that the plaintiffs had a right to a jury trial against the defendant Fawcett alone, as a matter of sound judicial policy, there should not be a fragmented trial in this consolidated action and the jury demand should cover the trial as it relates to Hizer and Doubleday as well and this Court in its discretion should grant that relief. Even if one were to assume that the demand was not timely, this Court should nevertheless, in light of the manner in which the Connecticut action and

AFFIDAVIT OF MARSHALL PERLIN IN OPPOSITION TO DEFENDANTS'
MOTIONS TO STRIKE DEMAND FOR JURY TRIAL AND IN SUPPORT
OF PLAINTIFFS CROSS-MOTION

this action have been de facto merged, exercise its discretion pursuant to Rule 39(b) and grant the plaintiffs a jury trial.

Dated: New York, New York
May 17, 1974

Marshall Perlin

Sworn to before me this

17th day of May, 1974.

LEONARD THANSON
Notary Public, State of New York

My Comm. Expires 12-30-76

Service of two copies of the within
Appendix is hereby admitted this
10th day of July 1974

at 2:55 PM Satterlee & Stephens, attys for
Defendant Doubleday RTH

Phillips, Krige, Sampson, Kenneth Ball

